(17,398.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 288.

THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* THE NEW YORK CLEARING HOUSE BUILDING COMPANY, PLAINTIFF IN ERROR,

vs.

EDWARD P. BARKER, THEODORE SUTRO, AND JAMES L. WELLS, COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 27, 1899.

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a Court of Appeals of New York, on Appeal from the Appellate Division for the First Department.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Appellant,
against
EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Respondents.

(Taxes of 1896.)

Papers on Appeal.

Bristow, Opdyke & Willcox, attorneys for relator and appellant, 20 Nassau street, New York.
John Whalen, attorney for respondents, 2 Tryon row, New York.

b STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

To the judges of the United States Supreme Court:

The return of the judges of the court of appeals of the State of New York in pursuance to the writ of error in the case of The People of the State of New York on the relation of The New York Clearing House Building Company, appellant, *vs.* Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, respondents, taxes of 1896, is contained in the papers and proceedings hereto attached.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this 29th day of April, A. D. 1899.

[Seal State of New York Court of Appeals.]

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

c Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 14th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur March 14th, 1899.

d THE PEOPLE, &c., *ex Rel.* THE NEW YORK Clearing House Building Company, Appellant,
ag'st
EDWARD P. BARKER & Others, Commissioners of Taxes, &c., Respondents.
} Taxes of 1896.

Be it remembered, that on the 21st day of July, in the year of our Lord one thousand eight hundred and ninety-eight, The New York Clearing House Building Company, the appellant in this proceeding, came here into the court of appeals, by Bristow, Opdyke & Willcox, Esqrs., its attorneys, and filed in the said court a notice of appeal and return thereto from the judgment & order of the appellate division of the supreme court in and for the first judicial department. And Edward P. Barker & others, commissioners of taxes, &c., the respondent- in said proceeding, afterwards appeared in said court of appeals by John Whalen, Esq., corporation counsel; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

e Whereupon, the said court of appeals having heard this cause argued by Mr. David Willcox, of counsel for the appellant, and by Mr. James M. Ward, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment and order of the supreme court appealed from in this proceeding, be in all things affirmed. And it was further ordered and adjudged that the respondents recover against the appellant costs of appeal to this court.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

f Wherefore, it is considered that the said judgment & order be in all things affirmed with costs as aforesaid, and stand in full force, strength and effect.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *March 14th*, 1899.

Seal State of New York Court of Appeals.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said proceeding in the court of appeals, with the papers originally filed therein attached thereto.

W. H. SHANKLAND, *Clerk.*

1 N. Y. Supreme Court, Appellate Division, First Department.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company
against
EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.
} Taxes of 1896.

Statement under Rule 41.

The writ in this proceeding was issued on July 16th, 1896, pursuant to an order of the same date made by Hon. Abraham R. Lawrence, J., allowing the same, and was served on the commissioners of taxes and assessments on the following dates: On James L. Wells, July 18th, 1896; on Edward P. Barker, July 20th, 1896; on Theodore Sutro, July 23d, 1896; and was filed in the office of the clerk of the city and county of New York on July 24th, 1896. The return of the said commissioners thereto was filed on November 5th, 1896, and was served on the attorneys for the relator on November 6th, 1896.

The names of the original parties in full were as above stated, and no change of parties has taken place pending this proceeding.

2 *Order for Writ.*

At a special term, part II, of the supreme court of the State of New York held at the court-house in the city and county of New York on the sixteenth day of July, 1896.

Present: Hon. Abraham R. Lawrence, J.

In the Matter of the Application of THE NEW YORK CLEARING HOUSE BUILDING COMPANY for a Writ of Certiorari to the Commissioner of Taxes and Assessments of the City and County of New York.

On reading and filing the petition of the above-named applicant, The New York Clearing House Building Company, verified July 15, 1896, and on motion of Bristow, Opdyke & Willcox, attorneys for said applicant, it is,

Ordered that a writ of *certiorari* be allowed and issued as prayed for in said petition, directed to Edward P. Barker, Theodore Sutro and James L. Wells, the commissioners of taxes and assessments of the city and county of New York; that a return thereto must be made and served upon the relator's attorneys within the time below specified; that said writ be returnable at a special term, part II, of this court to be held on the first Monday of September, 1896, at the county court-house in the city of New York, at the opening of court on that day, or as soon thereafter as a hearing can be had, and that said writ be allowed and signed and sealed by the clerk of this court.

Enter. ABRAHAM R. LAWRENCE, *J. S. C.*

3 Supreme Court, New York County.

To the supreme court of the State of New York:

The petition of the New York Clearing House Building Company, claiming to be aggrieved by the assessment hereinafter specified, respectfully shows to this court as follows:

I. The petitioner was duly incorporated upon January 18, 1894, pursuant to the business corporation law of the State of New York, and ever since that time, by virtue thereof, has been engaged at the city of New York in performing the functions specified in its certificate of incorporation, namely: "The purchase of land and the erection, fitting and furnishing and the maintenance of buildings thereon on which there shall be accommodations secured for the use of the New York Clearing House Association." The petitioner is engaged in no other business whatsoever.

II. Upon the second Monday of January, 1896, the total of the shares of the capital stock of the petitioner was $900,000.

Its gross assets then were not more than	$730,049 02
Ten per cent. of petitioner's capital was	90,000 00
Its remaining assets were.....	$640,049 02
This included amount invested in real estate in New York county, being both the assessed and actual value thereof.....	600,000 00
Balance	$40,049 02
The actual indebtedness of the petitioner then was ..	329,050 28

Therefore, on the second Monday of January, 1896, the total gross assets of the petitioner exclusive of its real estate did not exceed $40,049.02; on said second Monday of January, 1896, the indebtedness justly due and owing by the petitioner amounted to
4 $329,050.28. The petitioner, therefore, upon the said second Monday of January, 1896, had no personal property or capital stock whatsoever, which was subject to assessment or taxation in the city and county of New York.

III. The petitioner is informed and believes that one of the deputy tax commissioners in the city of New York, under the direction of the commissioners of taxes and assessments for that city and county, who then were and still are Edward P. Barker, Theodore Sutro and James L. Wells, between the first Monday of September, 1895, and the second Monday of January, 1896, assessed the petitioner upon the value of the personal property or capital stock of the petitioner, subject to assessment and taxation within that city and county in the sum of $165,999, and set down and included the same as the valuation for the purposes of assessment and taxation of the personal property or capital stock of the petitioner in the assessment lists or rolls or "annual record of the assessed valuation of real and personal estate," for the year 1896, kept in the office of said commissioners.

IV. Thereafter, and during the time that said assessment lists or

rolls or annual record were open to public inspection and to correction by said commissioners, they notified the petitioner thereof and requested it to furnish a statement of its condition for purposes of assessment on said second Monday of January, 1896. The petitioner, considering itself aggrieved by such assessment and valuation, in due time attended before said commissioners of taxes and assessments and duly made application to said commissioners to have such assessment and valuation corrected and altogether canceled, and made and delivered to said commissioners, in due form of law, a statement in writing under oath, truly and correctly showing its condition for the purposes of assessment on said second Mon-

day of January, 1896, setting forth the matters and things,

5 hereinbefore stated, a correct copy of which statement is hereto attached and marked "Exhibit A," and at the same time the petitioner delivered to said commissioners an affidavit containing further statements as to the facts a correct copy of which is hereto attached and marked "Exhibit B." Thereupon, and on or about April 2, 1896, the said commissioners found, fixed and determined the taxable value of the capital of your petitioner at $65,999, and notified your petitioner accordingly. A correct copy of said notice is hereto attached and marked "Exhibit C." Thereafter, and under date of April 13, 1896, your petitioner, still deeming itself aggrieved in the premises, addressed to said commissioners a further application for correction of the said assessment. A correct copy of said application is hereto attached and marked "Exhibit D." Thereupon, and on April 17, 1896, said commissioners raised the assessment of your petitioner to the sum of $165,999, and fixed the same at that sum, and under that date gave your petitioner notice to that effect. A correct copy of said notice is hereto annexed marked "Exhibit E." The said commissioners, therefore, refused to cancel said assessment, but notwithstanding petitioner's objection thereto raised the same and fixed it, as above stated, at the sum of $165,999, and have included and entered an assessment at that sum against the petitioner upon its personal estate or capital stock for the year 1896 in the assessment-rolls prepared by said commissioners and delivered by them to the board of aldermen of the city and county of New York as hereinafter set forth. The petitioner is not advised in what manner the said commissioners arrived at this amount. There is no lawful method of dealing with the facts which would lead to this result.

V. As the petitioner is informed and believes, no evidence or information whatever other than the aforesaid statements of

6 the petitioner was presented or known to or considered by said commissioners of taxes and assessments in making their determination. Said evidence was and is entirely uncontradicted; was accepted as sufficient by said commissioners, and no notice was ever given by the said commissioners to the petitioner that further or other evidence or information was required or desired by them, although the petitioner was ready and willing at all times to submit to the fullest examination by said commissioners concerning

the same. The said statements were absolutely accurate, correct and true in every respect.

VI. Upon July 6, 1896, the assessment-rolls of real and personal estate in the city and county of New York for the year 1896, containing the assessment aforesaid against the petitioner at the sum of $165,999, were completed, transmitted and delivered by said commissioners of taxes and assessments to the board of aldermen of the city of New York and received and filed by said board, and thereafter upon said day said commissioners gave public notice, as required by law, setting forth that the assessment-rolls of real and personal estate in said city for the year 1896 had been finally completed and had been delivered to the board of aldermen of said city and that such assessment-rolls would remain open to public inspection in the office of the clerk of said board of aldermen for a period of fifteen days from the date of said notice.

VII. The petitioner respectfully shows and specifies that the assessment aforesaid upon the personal property or capital stock of the petitioner and the decision or action of said commissioners of taxes and assessments of the city and county of New York, in imposing the same, were and are illegal and are erroneous by reason of overvaluation, and gives and specifies the particulars and grounds of said illegality, and the extent of such overvaluation, as the same are set forth in this petition and the exhibits attached thereto.

7 The total gross assets of the petitioner on said second Monday of January, 1896, were $730,049.02 and no more. From this sum, according to law, the said commissioners, after making an assessment upon petitioner's capital stock or personal property, should have deducted the following sum, which is not lawfully assessable in the city and county of New York as part of its personal property or capital stock, namely: Assessed value of real estate in New York county, $600,000. The balance of the petitioner's assets remaining after such deduction amounted to $130,049.02 and no more, but the indebtedness of the petitioner upon the said second Monday of January, 1896, amounted to $329,050.28; and this, according to law, should have been deducted from its taxable assets. Deducting the assessed value of the petitioner's real estate from its gross assets, real and personal, its indebtedness, therefore, upon the said second Monday of January, 1896, exceeded the remainder by $199,001.26, as appears by the foregoing statement.

The said commissioners of taxes and assessments, as already stated, did, in fact, upon April 2, 1896, find and fix the assessed valuation of the personal estate or capital stock of the petitioner at $65,999. Thereafter they had no power to increase the same, and still less had power to do so, except upon giving notice to the petitioner twenty days before the closing of said books of annual record upon May 1, 1896. The said commissioners, nevertheless, assumed to increase said assessment to $165,999 upon April 17, 1896, less than twenty days before the closing of said books of annual record and without giving notice twenty days previously to the closing thereof to the petitioner. Such action was unauthorized by law and contrary to the express provisions of section 819 of the consolidation act.

The tax imposed upon the capital stock of corporations by chapter 456 of the Laws of 1857 is a tax upon their property other than franchises. In the case of individuals the ownership of real estate subjects the owner to taxation upon the assessed value of the
8 real estate and not otherwise. The fourteenth amendment to the Constitution of the United States provides (sec. 1) that no State "shall deny to any person within its jurisdiction the equal protection of the laws." Corporations are persons within the meaning of this provision. The commissioners of taxes and assessments have adopted an erroneous construction of the statute in question, in that they have construed it as subjecting the petitioner, because it owns real estate, to taxation not only upon the assessed value of the real estate, but also upon its actual cost, although the assessed value is the same as the actual value and much less than the actual cost. This construes the statute as imposing on one class of persons, namely, corporations, taxation at a greater rate than upon another class of persons by reason of ownership of property identically similar in character. Obviously, such a construction renders the statute unconstitutional. Moreover, it is inconsistent with the provision of the Revised Statutes that "the real estate of all incorporated companies liable to taxation shall be assessed in the town or ward in which the same shall lie, *in the same manner* as the real estate of individuals." (1 R. S., 389, sec. 6.) It is inconsistent, too, with the provisions of chapter 456 of the Laws of 1857, that the capital stock of every company liable to taxation "shall be taxed *in the same manner* as the *other* real and personal estate of the county."

VIII. The petitioner, therefore, upon said second Monday of January, 1896, had no personal property or capital stock which was subject to assessment or tax within the city and county of New York, and the decision or action of the commissioners of taxes and assessments of said city and county in assessing the petitioner thereon and the assessment amounting to $165,999 imposed by them upon the personal property or capital stock of the petitioner as above stated, were and are illegal by reason of the particulars and grounds specified and given in this petition and the exhibits
9 attached thereto, and the same were and are erroneous by reason of overvaluation inasmuch as the petitioner had upon said second Monday of January, 1896, no personal property or capital stock subject to taxation within the said city and county. The petitioner is or will be injured by such illegal and erroneous assessment, because the president of the board of aldermen in the name of the board and as one of its acts, has already authorized and requested the commissioners of taxes and assessments to estimate and compute the taxes to be imposed under and by virtue of said rolls, and to cause the said estimation and computation to be properly set down and extended in the said tax or assessment rolls, and to perform such other duty connected with the said tax or assessment rolls or books as the said president is authorized or required by law to have done. And unless said assessment be reviewed according to law and canceled the petitioner will be compelled to pay taxes

thereon at the rate at which taxes may be payable, notwithstanding that upon the second Monday of January, 1896, it had and now has no taxable personal property or capital stock within the city and county of New York. No previous application has been made in the premises for the allowance and issue of a writ of *certiorari*.

Wherefore, the petitioner prays that a writ of *certiorari* may be issued and allowed by this honorable court directed to the commissioners of taxes and assessments for the city and county of New York commanding them to certify and return to this court all and singular their proceedings, decisions and action in the premises, with the reasons therefor, and the evidence considered by them, and the dates respectively, and all and singular said assessments and the documents and papers before them relating thereto, touching or concerning the valuation or assessment of the personal property or capital stock of the petitioner, or in anywise in respect thereto, and all and singular their decisions and actions thereon and the statement and protests, record and papers before them touching or concerning the same, and that the said decision and action of said commissioners may be reviewed and corrected on their merits and that the same may be reversed and altogether held for nothing, and that the aforesaid errors may be corrected according to law, or that the petitioner may have such other or further relief in the premises as may be meet.

And the petitioner will ever pray, &c.

THE NEW YORK CLEARING HOUSE BUILDING COMPANY,
By G. G. WILLIAMS, *President.*

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Petitioner, 20 *Nassau Street, New York, N. Y.*

CITY AND COUNTY OF NEW YORK, *ss:*

George G. Williams, being duly sworn, says that he is the president of The New York Clearing House Building Company, the petitioner above named; that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; that the grounds of deponent's belief as to all matters in said petition not stated upon his knowledge are his familiarity with said petitioner's business affairs as said president thereof; that the reason why this verification is not made by the said petitioner is that the said petitioner is a domestic corporation, and unable to make the same.

G. G. WILLIAMS.

Sworn to before me this 15th day of July, 1896.
EDW'D P. BROWN,
Notary Public, Kings Co.

Cert. filed — N. Y. Co.

11 EXHIBIT A.

City of New York, department of taxes and assessments.

COMMISSIONERS' OFFICE,
STEWART BUILDING, 280 BROADWAY.

Please state the full name of the corporation.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York for and in behalf of the N. Y. Clearing House Building Company, showing its condition, for the purpose of assessment, on the second Monday of January, 1896.

See note 1.

Total gross assets, real estate, $600,000, personal, $130,049.02	$730,049 02
Capital stock actually paid in, or secured to be paid in	900,000
Amount of surplus earnings	None.
Rate of dividend for last year, or last annual dividend	None.

Indebtedness in detail as follows:

Moneys borrowed	230,000
Money owing on building contract	99,050 28

Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable properties or securities, or for the purpose of evading taxation? No.

Assessed value of real estate, $600,000.

Describing particularly by ward and ward map numbers.

Ward 1, map No. 1208, Cedar street.

Note 1.—The lots and building cost the company about $965,000, but the building was considered especially for the business of the N. Y. Clearing House Association and is not adapted for any other use, so that
12 *its market value is not equal to its cost. Furniture, &c., cost $25,069.14. Cash in bank, $104,979.88.*

Amounts invested in the stocks of other corporations which are taxed upon their capital	$ None.
Amount invested in U. S. securities	None.

(If the stock of the company is worth less than par, state the actual value, and give the facts under oath which will justify such estimate of its value.) The stock on January 13, 1896, was worth less than par, for the reason that the company owned no property of any kind except its real estate as above, which is assessed for $600,000, and personal property of a value not exceeding $130,049.02, and the company owed $329,050.28. The stock is worth less than the cost of the company's real estate.

The principal office or place of transacting the financial business of the said corporation is situated in the first ward of the city of New York, at No. 77 Cedar street.

CITY OF NEW YORK, *ss:*

I, George G. Williams, the president of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

G. G. WILLIAMS, *Pt.*

Sworn to before me this 7th day of March, 1896.

EDWARD P. BROWN,

[NOTARIAL SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

13 EXHIBIT B.

City of New York, department of taxes and assessments.

In the Matter of the Statement of THE NEW YORK CLEARING HOUSE BUILDING COMPANY for the Purpose of Assessment on the Second Monday of January, 1896.

STATE OF NEW YORK, *City and County of New York,* } *ss:*

George G. Williams, being duly sworn, says as follows:

Deponent is the president of the New York Clearing House Building Company, and heretofore on or about the — day of ——, 1896, he verified, as such president, and had submitted to the department of taxes and assessments, a return herein. By reason of misapprehension of what was required to be shown by the said return the gross assets of the said company were stated in the said return at $1,094,944.66. The amount so stated as the value of the gross assets was merely the book value of such assets (*i. e.*, their cost, together with the expenses paid, including interest and taxes) and not their actual value. The actual value of the said assets for any purpose was less than such book value, and also less than the original cost value which entered into such book value.

The only assets of the said company consist of four lots of land in Cedar street, together with the building thereon erected by the said company, and the furniture placed therein and cash on hand.

The said building was erected expressly for the use of the
14 New York Clearing House Association in effecting exchanges between the associated banks and the settlement of the balances arising thereon, and was expressly planned to facilitate the speedy and safe making of such exchanges and the payment of such balances. The said building is not fitted for any other use, and consequently its market value is in fact less than its cost to the company. The cost to the company of the said lots and building was about $965,000, but in view of the absence of any general mar-

ket value for a building not fitted for other than a single use, the said building has been properly assessed for taxation at not over $600,000.

The only other property of the said company on January 13, 1896, consisted of personal property contained in the said building, together with books, &c., which costs the sum of $25,069.14, and of cash then on hand amounting to $104,979.88—in all $130,049.02.

On the other hand, the company then owed for money borrowed from the Clearing House Association the amount of $230,000, and also owed upon contracts for the construction of its building the amount of $99,050.28.

Also, by misapprehension the said return heretofore filed herein stated the assessed value of the company's real estate at $350,000, which was the assessed value for the year 1896, whereas the said real estate has been assessed upon the books of the tax department for the year 1896, at the amount of $600,000.

Deponent, therefore, attaches hereto and presents to the said commissioners an amended return on behalf of the said company, which it desires to be treated as its return for taxation herein for the year 1896.

G. G. WILLIAMS.

Sworn to before me this 7th day of March, 1896.

EDW'D P. BROWN,
Notary Public, Kings Co.

[NOTARIAL SEAL.]

Cert. filed — N. Y. Co.

15 EXHIBIT C.

Department of taxes and assessments, Stewart building, 280 Broadway.

NEW YORK, *Ap'l 2d*, 1896.

To the N. Y. Clearing House Building Company, 77 Cedar St.:

You are hereby notified that the board of taxes and assessments find the taxable value of your capital for this year to be $65,999.

Respectfully,

E. T. TAGGARD,
Deputy Tax Commissioner.

The records of this department must be completed on the 31st day of May in each year.

16 EXHIBIT D.

Bristow, Opdyke & Willcox, 20 Nassau St., New York.

APRIL 13, 1895.

To the commissioners of taxes and assessments of the city and county of New York:

The New York Clearing House Building Company, considering itself aggrieved by the assessed valuation for 1896 of its real and

personal estate, hereby applies to have the same corrected and states the grounds of objection thereto as follows:

The Revised Statutes provide that "the real estate of all incorporated companies liable to taxation shall be assessed in the town or ward in which the same shall lie *in the same manner as the real estate of individuals*" (1 R. S., 389, sec. 6). Chapter 456 of the Laws of 1857 provides that "the capital stock of every company liable to taxation" (after making certain specified deductions) "shall be assessed at its actual value and *taxed in the same manner as the other real and personal estate of the county.*"

It will be observed that the use of the expression that the capital stock is to be assessed at its "actual value" indicates no different rule regarding the assessment of the capital stock of corporations from that applying to assessable property generally. For "there can be no doubt that these various expressions used in the statutes" (to denote the rate at which property is to be assessed) "all are intended to mean the actual value of the property" (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 312). The rule regarding taxable property generally is, then, that it is to be assessed at its actual value and the statutes provide in terms that the property of corporations "shall be assessed in the same manner as (that) of individuals" (1 R. S., 389, sec. 6); "shall be taxed in the same manner as the other real and personal estate of the county" (Laws of 1857, ch. 456).

17 The "capital stock" which is subjected to taxation (Laws of 1857, ch. 456) is merely the real and personal property owned by the corporation other than its franchise (People *ex rel.* Union Trust Co. *vs.* Coleman, 126 N. Y., 433). And "a tax upon the actual value of the capital of a corporation is a tax upon the property in which such capital may be invested" (People *ex rel.* Edison Co. *vs.* Barker, 139 N. Y., 55; Pullman Car Co. *vs.* Pennsylvania, 141 U. S., 25).

If these principles be applied to the facts set forth in the statement made and delivered to yourselves for and in behalf of the New York Clearing House Building Company, showing its condition for the purpose of assessment, on the second Monday of January, 1896, it will be seen that the company has no assessable property within the county of New York.

The only assets of the company consist of four lots of land in Cedar street, together with a building erected thereon by the company, and personal property consisting of furniture and cash. This real estate, as already pointed out, is to be assessed "in the same manner as the real estate of *individuals*" (1 R. S., 389, sec. 6), in the same manner as the *other real estate of the county* (Laws of 1857, ch. 456). In performance of your duty in this regard, you have assessed this real estate of the company at $600,000. The value thus fixed by yourselves in accordance with law is presumptively the actual value of the real estate in question (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 313). Moreover, while it has cost the company more than this, the affidavit of George G. Williams, the president of the company, which has been filed with you, shows that your action in

that regard is correct, and that the value of this real estate does not exceed the amount at which you have placed it.

If this real estate were owned by an individual, it would,
18 therefore, be assessed at the sum of $600,000. But, as already said, the statutes provide that it shall be assessed "in the same manner" as the real estate of individuals—as the other real estate of the county, The ownership thereof cannot, therefore, subject the owner to a greater amount of assessment and taxation because such owner happens to be a corporation instead of an individual. As already said, the tax imposed on corporations is a tax merely upon their property. This piece of property of the Clearing House Building Company has been assessed by yourselves at the sum of $600,000 as its actual value. An individual owning it would pay taxes upon account thereof at that sum and no more. For the reasons already stated no different rule is applicable in the case of ownership by a corporation.

You cannot, therefore, assess the company at a greater rate in regard to this property on the theory that its actual value is greater than its assessed value. Nothing of the sort could be done in the case of an individual owner. Equally, therefore, it cannot be done in the case of a corporate owner. Moreover, it is now held by authority that the statutory expression "assessed value" is the same as actual value; in the eye of the law no difference can exist, for to hold otherwise would be to concede that it may be recognized as a principle of taxation and judicial decision that the assessing officials do not perform their duty (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 312).

Finally, if it were the case that there was a difference between the assessed and the actual value of this real estate, would that difference constitute property of any sort which could be subjected to assessment independently of the real estate itself? Because there was such a margin could the owner be subjected to any assessment in addition to that already imposed upon the real estate? What
19 would be the subject of such further assessment? Not real estate, because that has been already assessed. Not personal property, because the fact that public officials have assessed a person's real estate below its value cannot establish that he is in possession of a corresponding amount of personal property. It must, therefore, necessarily be the fact that an undervaluation of a particular parcel of real estate constitutes no legal ground for imposing upon the owner an assessment additional to or independent of that already made upon the real estate. Where the owner is an individual this will not be disputed. It must equally be the fact where a corporation is the owner, because, as already frequently pointed out, the statutes in terms provide that the manner of assessment and taxation of the property of corporations must be the same as that of individuals.

The conclusion is, therefore, inevitable that the Clearing House Building Company can be assessed by reason of its ownership of this real estate at no greater sum than $600,000. The remaining property of the company clearly does not render it liable to assess-

ment. This consists merely of personal property to the amount of $130,049.02. The indebtedness of the company largely exceeds this sum, being $329,050.28. It is well settled that in the case of domestic corporations in arriving at the sum at which they are properly assessable the amount of their debts should be deducted from their assets (People *ex rel. vs.* Barker, 141 N. Y., 196). The debts of the Clearing House Building Company, as above shown, largely exceed its personal property, and it is not assessable by reason of ownership of any property of that character. Its real estate has been assessed by yourselves at the sum of $600,000 as its actual value, and the company is not assessable at any greater sum by reason of its ownership thereof.

20 These considerations show that the New York Clearing House Building Company is not taxable within New York county upon its capital. The company therefore respectfully applies to have the assessed valuation of the same corrected by striking from "the annual record of assessed valuation of real and personal estate" for the present year any assessment against the company by reason thereof.

THE NEW YORK CLEARING HOUSE BUILDING COMPANY,
By G. G. WILLIAMS, *Pt.*

21 EXHIBIT E.

Department of taxes and assessments, Stewart building, 280 Broadway.

NEW YORK, *Ap'l* 17, 1896.

To the N. Y. Clearing House Building Company, 77 Cedar St.:

You are hereby notified that the board of taxes and assessments find the taxable value of your capital for this year to be $165,999.

Respectfully, E. T. TAGGARD,
Deputy Tax Commissioner.

Second notice.

The records of this department must be completed on the 31st day of May in each year.

22 *Writ of Certiorari.*

The People of the State of New York on the relation of the New York Clearing House Building Company to Edward P. Barker, Theodore Sutro, and James L. Wells, Esqrs., commissioners of taxes and assessments for the city and county of New York, Greeting:

Whereas we have been informed by the duly verified petition of the petitioner, The New York Clearing House Building Company, that certain proceedings were had before you in regard to the assessment and taxation for the year 1896 of the said petitioner, and that you have decided to assess the said petitioner upon and in respect of the personal property or capital stock held by it, upon the second

Monday of January, 1896, in the sum of $165,999, and found that it is assessable at that sum for the year 1896, and have refused to correct or cancel the said assessment upon the petitioner's application, although the same was claimed to be illegal and erroneous, by reason of overvaluation, because the petitioner then had and now has no personal property or capital stock within the city and county of New York subject to taxation, and you have included the said assessment in the assessment rolls for the year 1896, prepared by you for delivery to the board of aldermen of the city and county of New York and delivered to said board, and it is specified in said petition that the said assessment is illegal, giving the particulars of the alleged illegality, and is erroneous by reason of overvaluation, stating the amount of such overvaluation, and that the petitioner will be injured by such alleged illegal or erroneous assess-
23 ment, and fifteen days have not expired since such delivery of said assessment-rolls, and we, being willing for certain causes to be certified of such proceedings and of the action had by and before you, the said commissioners, in the matter of the assessment for taxation of the petitioner for the year 1896, and of the decision made by you on the application of the said petitioner in that regard, do command you that you certify and return under your hands and as amply as the same remains before you:

First. Those proceedings regarding the said assessment against the petitioner with all things appertaining thereto, and with that part of the record of valuation and assessment relating to the same.

Second. Any and all papers submitted by the petitioner and filed with you, and any examination under oath or otherwise of said petitioner.

Third. Any other evidence or information, if any, before you or considered by you in arriving at your decision, and if there were no such other evidence or information that you so state.

Fourth. Your reasons for arriving at such decision and the method adopted by you in arriving at the same and under what law and by virtue of what power the said assessment is made.

Unto our supreme court at a special term, part II thereof, to be held in the court-house, in the city of New York, on the first Monday of September, 1896, at the opening of court on that day, or as soon thereafter as a hearing can be had, so that our supreme court may further cause to be done thereupon what of right and according to law ought to be done, and have you then and there this writ; and the return hereto must be made and served upon the relator's attorney within the time above specified.

Witness, Hon. Abraham R. Lawrence, one of the justices
24 of said supreme court, at the court-house, in the city of New York, on the sixteenth day of July, 1896.

By the court:

[Seal of the Supreme Court.]

HENRY D. PURROY, *Clerk.*

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator, 20 *Nassau Street, New York, N. Y.*

The foregoing writ is allowed this 16th day of July, 1896.

AB'M R. LAWRENCE, *J. S. C.*

To Messrs. Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments for the city and county of New York:

Please take notice that a writ of *certiorari* has been duly granted herein, of which the foregoing is a copy, and the original of which is herewith exhibited to you, and will be forthwith filed in the office of the clerk of this court.

Dated New York, July 16, 1896.

Yours, &c., BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator.

25 *Return.*

(Writ.)

The People of the State of New York on the relation of the New York Clearing House Building Company to Edward P. Barker, Theodore Sutro, and James L. Wells, Esqs., commissioners of taxes and assessments for the city and county of New York, Greeting:

Whereas, we have been informed by the duly verified petition of the petitioner, The New York Clearing House Building Company, that certain proceedings were had before you in regard to the assessment and taxation for the year 1896 of the said petitioner, and that you have decided to assess the said petitioner upon and in respect of the personal property or capital stock held by it upon the second Monday of January, 1896, in the sum of $165,999, and found that it is assessable at that sum for the year 1896, and have refused to correct or cancel the said assessment upon the petitioner's application, although the same was claimed to be illegal and erroneous, by reason of overvaluation, because the petitioner then had, and now has, no personal property or capital stock within the city and county of New York subject to taxation, and you have included the said assessment in the assessment-rolls for the year 1896, prepared by you for delivery to the board of aldermen of the city and county of New York, and delivered to said board; and it is specified in said petition that the said assessment is illegal, giving the particulars of the alleged illegality, and is erroneous by reason of overvaluation, stating the amount of such overvaluation, and that the petitioner will be injured by such alleged illegal or erroneous assess-

26 ment, and fifteen days have not expired since such delivery of said assessment-rolls, and we, being willing, for certain causes, to be certified of such proceedings, and of the action had by and before you, the said commissioners, in the matter of the assessment for taxation of the petitioner for the year 1896, and of the decision made by you on the application of said petitioner in that regard, do command you that you certify and return under your hands and as amply as the same remains before you:

First. Those proceedings regarding the said assessment against the petitioner, with all things appertaining thereto, and with that part of the record of valuation and assessment relating to the same.

Second. Any and all papers submitted by the petitioner and filed with you, and any examination under oath or otherwise of said petitioner.

Third. Any other evidence or information, if any, before you or considered by you in arriving at your decision, and if there were no such other evidence or information that you so state.

Fourth. Your reasons for arriving at such decision and the method adopted by you in arriving at the same, and under what law and by virtue of what power the said assessment is made.

Unto our supreme court at a special term, part II thereof, to be held in the court-house in the city of New York, on the first Monday of September, 1896, at the opening of court on that day, or as soon thereafter as a hearing can be had, so that our supreme court may further cause to be done thereupon what of right and
27 according to law ought to be done, and have you then and there this writ, and the return hereto must be made and served upon the relator's attorney within the time above specified.

Witness Hon. Abraham R. Lawrence, one of the justices of said supreme court, at the court-house, in the city of New York, on the 16th day of July, 1896.

By the court:

[Seal of the Supreme Court.]

HENRY D. PURROY, *Clerk.*

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator, 20 *Nassau Street*, *New York*, *N. Y.*

The foregoing writ is allowed this 16th day of July, 1896.

AB'M R. LAWRENCE, *J. S. C.*

28 Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company	
against	Taxes of 1896.
EDWARD P. BARKER, THEODORE SUTRO, and James L. Wells, the Commissioners of Taxes and Assessments of the City of New York.	

To the supreme court of the State of New York:

Edward P. Barker, Theodore Sutro and James L. Wells, the commissioners of taxes and assessments of the city of New York, respectfully return to the writ of *certiorari* hereto prefixed and issued out of this court on the 16 day of July, 1896, as follows:

Between the first Monday of September, in the year 1895, and the se ond Monday of January, 1896, the deputy tax commissioners

of the city of New York, under our direction, assessed all the taxable property in the several districts of said city that were assigned to them respectively for that purpose, and furnished to us, under oath, a detailed statement of all such property; that said deputies have personally examined each and every house, building, lot, pier or other assessable property, giving the street and ward map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known; also, in their judgment, the sum for which such property, under ordinary circumstances, would sell, with such other information in detail, relative to personal property or otherwise, as the commissioners of taxes and assessments from time to time required; and the assessed valuations so made of all such property within the city of New York were duly entered in detail in books provided for that purpose by the comptroller, and kept in our office in the city of New York, called "The annual record of assessed valuation of real and personal estate." The deputy tax commissioner assigned to that duty, under our direction, between said times, duly assessed the capital and surplus of the relator for the year 1896, at the sum of nine hundred thousand dollars ($900,000) and duly entered such assessment in said books, and thereafter notice of such assessment was sent to said relator.

The said books were kept open in our office, for examination and correction, from the second Monday of January, 1896, until the first day of May, 1896, and previous to and during the time said books were open for inspection the fact was duly advertised according to law. During the time said books were open to public inspection, as above stated, written application was made by the said relator to have the assessed valuation corrected. And thereupon the said relator submitted — us, and filed in our office, a statement in writing, of which a copy marked "Schedule A," is hereto attached and made part of this return. Thereupon we examined into the complaint so made by the relator, and considered such application and fixed the amount of such assessment at the sum of one hundred and sixty-five thousand, nine hundred and ninety-nine ($165,999) dollars, which we believed to be just, and which we decided to be the sum for which said relator was lawfully assessable for the year 1896, and thereupon said assessment theretofore entered in said books of annual record was corrected in accordance with our decision. A copy of said assessment, as it appears upon said books of annual record, marked "Schedule B," is hereto annexed and made part of this return. The figures erased on said schedule indicate the original assessment made by the deputy tax commissioner.

Thereafter, we caused to be duly prepared from said books of annual record assessment-rolls for each of the several wards of the said city, and annexed to each of said rolls our certificate that the same was correct, in accordance with the entry in said books of record, and on the first Monday of July, 1896, the rolls thus certified were delivered by us to the board of aldermen of the city of New York, at the city hall in said city.

We further return that the method by which we made our said assessment for the purpose of taxation for the year 1896, was as follows:

We ascertained that the petitioner was duly incorporated pursuant to the business corporation law of the State of New York on the 18th day of January, 1894, for the purpose, as specified in its certificate of incorporation, of purchasing land and erecting, fitting, furnishing and maintaining buildings thereon, in which buildings there should be accommodations secured for the use of the New York Clearing Association.

That the relator was taxable under chapter 456 of the Laws of 1857.

On the second Monday of January, 1896, the relator was assessed upon the books of annual record of the assessed valuation of real and personal estate for $900,000.

Under date of January 17, 1896, upon an application for the revision and cancellation against it, the relator filed a verified statement purporting to disclose its condition for purposes of taxation upon its capital and surplus for the year 1896, by which statement it stated its total gross assets at $1,094,944, its capital stock actually paid in or secured to be paid in at $900,000, exhibited no surplus nor — that any dividend had been declared. Its total indebtedness was returned at $329,050 and the assessed value of its real estate at the sum of $350,000.

Upon this statement, which is attached to our return as
31 Schedule A, if we had accepted all of the statements of fact made by the relator as true and from its total gross assets as exhibited by the relator had deducted the amount of its debts and the assessed value of its real estate as returned by it the relator would have been assessable upon its capital and surplus in the sum of $415,895.

Under date, however, of March 7, 1896, the relator filed with us an amended application for a cancellation of the assessment against its capital and surplus for purposes of taxation for the year 1896 as well as an affidavit of its president, which application and affidavit are returned herewith as Schedules A1 and A2, by which application and affidavit the relator not only claimed to disclose its actual condition for purposes of taxation upon its capital and surplus upon the second Monday of January, 1896, but as well to correct certain errors and mistakes contained in its prior application and statement returned herewith as Schedule A.

By the second statement filed the relator pretended to disclose its total gross assets at the sum of $730,049, but in the exhibition so made, its real estate was included only at its assessed value. It exhibited its capital stock actually paid in or secured to be paid in at $900,000, disclosed no surplus earnings nor the payment of any dividend. Its debts it disclosed at $329,050, but in a note upon the face of the amended application showed the cost of its real estate to have been $965,000.

We accepted as true all of the statements of fact contained in the said amended statement of the relator except the claim and allega-

tion that the market value of the real estate of the relator was not equal to its cost, since upon that proposition no evidence was offered on the part of the relator, and we were satisfied that the contrary was true and that the actual value of the real estate of the relator was measured on the second Monday of January, 1896, by its cost.

32 We therefore ascertained the value of the total gross assets of the relator on the second Monday of January, 1896, to have been..... ..... $1,095,049

From such aggregate we deducted:

1st. The debts of the relator.....	$329,050	
2nd. The assessed value of its real estate.....	600,000	
		929,050
Leaving the relator assessable upon its capital and surplus on the second Monday of January, 1896, for....		165,999

We fixed the assessment at that sum and so advised the relator. Thereafter and on April 13, 1895, relator, by its counsel, filed with us a written argument claiming to exhibit to us the law which should govern our action upon the several applications of the relator for cancellation of the assessment against its capital and surplus for the year 1896. The same is hereto attached and marked "Schedule A3." We declined to accept such conclusions as a correct statement of law, but being on the contrary advised that upon the facts the assessment as fixed by us was in entire accordance with the law governing our action and being satisfied that the said assessment was in all respects just and proper, we finally fixed the assessment against the capital and surplus of the relator for purposes of taxation for the year 1896 at the sum of $165,999.

With regard to the statements contained in said writ, and the petition upon which the same was granted, to the effect that said assessment is erroneous by reason of overvaluation, or is unequal, in that it was made at a higher proportionate valuation than other real or personal property on the same rolls, or that the said assessment, upon any of the grounds specified in said petition, is
33 illegal, erroneous or void, we certify and return, upon information and belief, that each and every of such statements is untrue.

In witness whereof, we have hereunto subscribed our names, this 5 day of November, 1896.

EDWARD P. BARKER,
THEODORE SUTRO,
Commissioners of Taxes and Assessments.

CITY AND COUNTY OF NEW YORK, *ss:*

Edward P. Barker, Theodore Sutro and James L. Wells, being severally duly sworn, say, and each for himself says, that the foregoing return is true to his knowledge, except as to the matters

therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

E. P. BARKER.
THEODORE SUTRO.

Sworn to before me this 5 day — November, 1896.
C. ROCKLAND TYNG,
Notary Public, New York County.

34 SCHEDULE A.

City of New York, department of taxes and assessments.

COMMISSIONERS' OFFICE,
STEWART BUILDING, 280 BROADWAY.

☞Please state the full name of the corporation.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York for and in behalf of the N. Y. Clearing House Building Company, showing its condition for the purpose of assessment on the second Monday of January, 1896.

*Total gross assets	$1,094,944 66
*Capital stock actually paid in, or secured to be paid in	900,000 00
Amount of surplus earnings	"
Rate of dividend for last year, or last annual dividend	"

Indebtedness in detail as follows:

N. Y. Clearing House Ass'n loan	230,000 00
Due on contracts for new clearing-house	99,050 28

Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

Assessed value of real estate:

Describing particularly by ward and ward map numbers.

Ward 1. Ward map No. 1208 Cedar St.	$350,000 00
Amounts invested in the stocks of other corporations which are taxed upon their capital	
Amount invested in U. S. securities	

35 (If the stock of the company is worth less than par, state the actual value, and give the facts under oath which will justify such estimate of its value.) *The entire capital of this company is invested in real estate. The gross assets represent the price paid for ground and the cost of construction of building to date. The company was organized merely to erect and hold title to the building on the above-described premises.

The principal office or the place of transacting the financial business of the said corporation is situated in the 1st ward of the city of New York, at No. 14 Pine St.

CITY OF NEW YORK, *ss:*

I, George G. Williams, the president of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

G. G. WILLIAMS,
N. Y. Clearing House Building Co.

Sworn to before me this 17th day of Jan'y, 1896.
EDW'D P. BROWN,
Notary Public, Kings Co.

Cert. filed — N. Y. Co.

☞ The commissioners are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

(Endorsed:) Line No. 1887. Statement of the N. Y. Clearing House Building Co. for 1896. Assessment fixed at $165,999. Barker, Wells, commissioners of taxes and assessments.

36 SCHEDULE A 1.

City of New York, department of taxes and assessments.

COMMISSIONERS' OFFICE,
STEWART BUILDING, 280 BROADWAY.

☞ Please state the full name of the corporation.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York for and in behalf of the N. Y. Clearing House Building Company, showing its condition for the purpose of assessment on the second Monday of January, 1896.

See note I.

Total gross assets—real estate, $600,000; personal, $130,049.02	$730,049 02
Capital stock actually paid in or secured to be paid in.	900,000
Amount of surplus earnings	None.
Rate of dividend for last year, or last annual dividend	None.

Indebtedness in detail as follows:

Money borrowed	$230,000
Money owing on building contract	99,050 28

Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

Assessed value of real estate, $600,000.

Describing particularly by ward and ward map numbers.

Ward 1, map 1208, Cedar street.

37 NOTE 1.—The lots and building cost the company about $965,000, but the building was constructed especially for the business of the N. Y. Clearing House Association, and is not adapted for any other use, so that its market value is not equal to its cost. Furniture, &c., cost $25,069.14. Cash in bank, $104,979.88.

Amounts invested in the stocks of other corporations which are taxed upon their capital ..... None.

Amount invested in U. S. securities..... None.

(If the stock of the company is worth less than par, state the actual value, and give the facts under oath which will justify such estimate of its value.) The stock on January 13, 1896, was worth less than par, for the reason that the company owned no property of any kind except its real estate as above, which is assessed for $600,000; and personal property of a value not exceeding $130,049.02; and the company owed $329,050.28. The stock is worth less than the cost of the company's real estate.

The principal office, or the place of transacting the financial business of the said corporation, is situated in the first ward of the city of New York, at No. 77 Cedar street.

CITY OF NEW YORK, *ss:*

I, George G. Williams, the president of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

G. G. WILLIAMS, *Pt.*

Sworn to before me this 7 day of March, 1896.

EDW'D P. BROWN,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

38 ☞ The commissioners are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

(Endorsed:) Line No. 1887. Statement of the N. Y. Clearing House Building Co. for 1896. Assessment fixed at $165,999. Barker, Wells, commissioners of taxes and assessments.

39 SCHEDULE A 2.

City of New York, department of taxes and assessments.

In the Matter of the Statement of THE NEW YORK CLEARING HOUSE BUILDING COMPANY for the Purpose of Assessment on the Second Monday of January, 1896.

STATE OF NEW YORK, }
City and County of New York, } ss.:

George G. Williams, being duly sworn, says as follows:

Deponent is the president of the New York Clearing House Building Company, and heretofore on or about the — day of —, 1896, he verified, as such president, and had submitted to the department of taxes and assessments a return herein. By reason of misapprehension of what was required to be shown by the said return the gross assets of the said company were stated in the said return at $1,094,944.66. The amount so stated as the value of the gross assets was merely the book value of such assets (*i. e.*, their cost, together with the expenses paid, including interest and taxes), and not their actual value. The actual value of the said
40 assets for any purpose was less than such book value, and also less than the original cost value which entered into such book value.

The only assets of the said company consist of four lots of land in Cedar street, together with the building thereon erected by the said company, and the furniture placed therein, and cash on hand.

The said building was erected expressly for the use of the New York Clearing House Association in effecting exchanges between the associated banks and the settlement of the balances arising thereon; and was expressly planned to facilitate the speedy and safe making of such exchanges and the payment of such balances. The said building is not fitted for any other use, and consequently its market value is, in fact, less than its cost to the company. The cost to the company of the said lots and building was about $970,000, but in view of the absence of any general market value for a building not fitted for other than a single use, the said building has been properly assessed for taxation at not over $600,000.

The only other property of the said company on January 13, 1896, consisted of personal property contained in the said building, together with books, &c., which cost the sum of $25,069.14, and of cash then on hand amounting to $104,979.88, in all, $130,049.02.

On the other hand, the company then owed for money borrowed from the Clearing House Association the amount of $230,000, and also owed upon contracts for the construction of its building the amount of $99,050.28.

Also, by misapprehension the said return heretofore filed herein stated the assessed value of the company's real estate at $350,000, which was the assessed value for the year 1896, whereas the said

real estate has been assessed upon the books of the tax department for the year 1896 at the amount of $600,000.

Deponent therefore attaches hereto and presents to the
41 said commissioners an amended return on behalf of the said company, which it desires to be treated as its return for taxation herein for the year 1896.

G. G. WILLIAMS.

Sworn to before me this 7th day of March, 1896.

EDW'D P. BROWN,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

SCHEDULE A 3.

Bristow, Opdyke & Willcox, 20 Nassau St., New York.

Benj. H. Bristow. Wm. S. Opdyke. David Willcox.
Wm. B. Bristow.

APRIL 13, 1895.

To the commissioners of taxes and assessments of the city and county of New York:

The New York Clearing House Building Company, considering itself aggrieved by the assessed valuation for 1896 of its real and personal estate, hereby applies to have the same corrected, and states the grounds of objection thereto as follows:

The Revised Statutes provide that "the real estate of all incorporated companies liable to taxation shall be assessed in the town or ward in which the same shall lie, *in the same manner as the real estate of individuals*" (1 R. S., 389, sec. 6). Chapter 456 of
42 the Laws of 1857 provides that "the capital stock of every company liable to taxation" (after making certain specified deduction), "shall be assessed at its actual value and *taxed in the same manner as the other real and personal estate of the county.*"

It will be observed that the use of the expression that the capital stock is to be assessed at its "actual value" indicates no different rule regarding the assessment of the capital stock of corporations from that applying to assessable property generally. For "there can be no doubt that these various expressions used in the statutes" (to denote the rate at which property is to be assessed), "all are intended to mean the actual value of the property" (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 312). The rule regarding taxable property generally is, then, that it is to be assessed at its actual value, and the statutes provide in terms that the property of corporations "shall be assessed in the same manner as (that) of individuals" (1 R. S., 389, sec. 6)—"shall be taxed in the same manner as the other real and personal estate of the county" (Laws of 1857, ch. 456).

The "capital stock" which is subjected to taxation (Laws of 1857, ch. 456), is merely the real and personal property owned by the corporation, other than its franchise (People *ex rel.* Union Trust Co.

vs. Coleman, 126 N. Y., 433). And "a tax upon the actual value of the capital of a corporation is a tax upon *the* "the property in which such capital may be invested" (People *ex rel.* Edison Co. *vs.* Barker, 139 N. Y., 55; Pullman's Car Co. *vs.* Pennsylvania, 141 U. S., 25).

If these principles be applied to the facts set forth in the statement made and delivered to yourselves for and in behalf of the New York Clearing House Building Company, showing its condition for the purpose of assessment, on the second Monday of
43 January, 1896, it will be seen that the company has no assessable property within the county of New York.

The only assets of the company consist of four lots of land in Cedar street, together with a building erected thereon by the company, and personal property consisting of furniture and cash. This real estate, as already pointed out, is to be assessed "in the same manner as the real estate of *individuals*" (2 R. S., 389, sec. 6)—in the same manner as the *other real estate of the county* (Laws of 1857, ch. 456). In performance of your duty in this regard, you have assessed this real estate of the company at $600,000. The value thus fixed by yourselves in accordance with law is presumptively the actual value of the real estate in question (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 313). Moreover, while it has cost the company more than this, the affidavit of George G. Williams, the president of the company, which has been filed with you, shows that your action in that regard is correct and that the value of this real estate does not exceed the amount at which you have placed it.

If this real estate were owned by an individual, it would, therefore, be assessed at the sum of $600,000. But, as already said, the statutes provide that it shall be assessed "in the same manner" as the real estate of individuals—as the other real estate of the county. The ownership thereof cannot, therefore, subject the owner to a great amount of assessment and taxation because such owner happens to be a corporation instead of an individual. As already said, the tax imposed on corporations is a tax merely upon their property. This piece of property of the Clearing House Building Company has been assessed by yourselves at the sum of $600,000 as its actual value. An individual owning it would pay taxes upon account thereof at that sum and no more. For the reason already stated no different rule is applicable in the case of ownership by a corporation.

44 You cannot, therefore, assess the company at a greater rate, in regard to this property, on the theory that its actual value is greater than its assessed value. Nothing of the sort could be done in the case of an individual owner. Equally, therefore, it cannot be done in the case of a corporate owner. Moreover, it is now held by authority that the statutory expression "assessed value" is the same as actual value—in the eye of the law no difference can exist, for to hold otherwise would be to concede that it may be recognized as a principle of taxation and judicial decisions that the assessing officials do not perform their duty (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 312).

Finally, if it were the case that there was a difference between the assessed and the actual value of this real estate, would that difference constitute property of any sort which could be subjected to assessment independently of the real estate itself? Because there was such a margin could the owner be subjected to any assessment in addition to that already imposed upon the real estate? What would be the subject of such further assessment? Not real estate, because that has been already assessed. Not personal property, because the fact that public officials have assessed a person's real estate below its value cannot establish that he is in possession of a corresponding amount of personal property. It must, therefore, necessarily be the fact that an undervaluation of a particular parcel of real estate constitutes no legal ground for imposing upon the owner an assessment additional to or independent of that already made upon the real estate. Where the owner is an individual this will not be disputed. It must equally be the fact where a corporation is the owner, because, as already frequently pointed out, the statutes in terms provide that the manner of assessment and taxation of the property of corporations must be the same as that of individuals.

45 The conclusion is, therefore, inevitable that the Clearing House Building Company can be assessed by reason of its ownership of this real estate at no greater sum than $600,000.

The remaining property of the company clearly does not render it liable to assessment. This consists merely of personal property to the amount of $130,049.02. The indebtedness of the company largely exceeds this sum, being $329,050.28. It is well settled that, in the case of domestic corporations in arriving at the sum at which they are properly assessable, the amount of their debts should be deducted from their assets (People *ex rel. vs.* Barker, 141 N. Y., 196). The debts of the Clearing House Building Company, as above shown, largely exceed its personal property, and it is not assessable by reason of ownership of any property of that character. Its real estate has been assessed by yourselves at the sum of $600,000, as its actual value, and the company is not assessable at any greater sum by reason of its ownership thereof.

These considerations show that the New York Clearing House Building Company is not taxable within New York county upon its capital. The company, therefore, respectfully applies to have the assessed valuation of the same corrected by striking from "the annual record of assessed valuation of real and personal estate" for the present year any assessment against the company by reason thereof.

THE NEW YORK CLEARING HOUSE
BUILDING COMPANY,
By G. G. WILLIAMS, *Pt.*

46 Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of the New York Clearing House Building Company
against
EDWARD P. BARKER, THEODORE SUTRO, and James L. Wells, the Commissioners of Taxes and Assessments of the City of New York.
} Taxes of 1896.

SCHEDULE B.

Page.	Line.	Name.	Principal office.	Ward.	Valuation.	Corrected amount.	Remarks.
247	1887	New York Clearing House Building Co.....	77 Cedar...	1	[$900,000]*	$165,999	B. W.

[* Figures enclosed in brackets erased in copy.]

CITY AND COUNTY OF NEW YORK, *ss.:*

I, Edward T. Taggard, one of the deputy tax commissioners of the city of New York, do depose and say, that the foregoing annual record of the assessed valuation of the personal estate of corporate companies and joint stock associations contains a statement of the taxable personal property of such corporations and joint stock associations in this city, for the year one thousand eight hundred and ninety-six (1896).

E. T. TAGGARD,
Deputy Tax Commissioner.

Sworn to before me, this the 11th day of January, 1896.

MORGAN J. O'BRIEN,
Justice of the Supreme Court.

47 *Order Dismissing Writ.*

At a special term, part III, of the supreme court, in and for the city and county of New York, held in the county court-house, in said city, on the 1st day of November, 1897.

Present: Hon. Henry R. Beekman, justice.

(Title of Proceeding.)

The above-named relator having sued out a writ of *certiorari* to review the proceedings of the above-named defendants, in assessing personal property or capital stock of the relator for the year 1896 at the sum of $165,999, and the said writ having come duly on for argument:

Now, upon reading and filing the petition verified the 15th day of July, 1896, with the exhibits thereto attached, the order granting the writ of *certiorari* dated the 16th day of July, 1896, and the writ of *certiorari* therein allowed on the 16th day of July, 1896, and the

return of the defendants thereto, with the schedules thereto attached, filed in the office of the clerk of the city and county of New York on the 5th day of November, 1896, and after hearing David Willcox, Esq., of counsel for the relator, in support of said writ, and James M. Ward, Esq., of counsel for the defendants, in opposition thereto:

Now, upon motion of Francis M. Scott, counsel to the corporation, it is—

Ordered that the prayer of said petitioner be denied, and the said writ of *certiorari* be, and the same hereby is, dismissed with costs to the defendant, to be taxed in accordance with chapter 269 of the Laws of 1880.

Enter.

H. R. B., *J. S. C.*

48 *Judgment.*

(Title of Proceeding.)

The above-named relator having sued out a writ of *certiorari* to review the proceedings of the above-named defendants in assessing the personal or capital stock of the relator for the year 1896, at the sum of $165,999, and the said writ having been duly argued, and an order having been duly entered on the 16th day of November, 1897, dismissing the said writ of *certiorari* with costs, and the costs of the defendants having been duly taxed at the sum of $57.50:

Now, upon motion of Francis M. Scott, counsel to the corporation, it is—

Ordered and adjudged that the prayer of the said petitioner be denied, and that the said writ of *certiorari* be and the same hereby is dismissed; and it is—

Further ordered and adjudged, that the above-named defendants, Edward P. Barker, Theodore Sutro and James L. Wells, commissioners of taxes and assessments of the city of New York, recover of the above-named relator, The New York Clearing House Building Company, the sum of $57.50, the amount of their costs as taxed, and that they have execution therefor.

Dated New York, November 23, 1897.

HENRY D. PURROY, *Clerk.*

49 *Notice of Appeal.*

(Title of Proceeding.)

SIRS: Please take notice that the relator The New York Clearing House Building Company hereby appeals to the appellate division of this court for the first department from the order of Hon. Henry R. Beekman, J., made herein, dated November 1, 1897, and entered and filed in the office of the clerk of the city and county of New York on the 16th day of November, 1897, dismissing a writ of *certiorari* to review the proceedings of the defendants Edward P. Barker, Theodore Sutro and James L. Wells, as commissioners of taxes and assessments of the city of New York, in assessing personal property

or capital stock of the relator for the year 1896, and from each and every part of the said order, and also from the judgment entered thereupon and filed in the office of the clerk of the city and county of New York on the 23d day of November, 1897, and from each and every part of said judgment.

Dated New York, N. Y., December 2, 1897.

Yours, &c.,

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator, 20 *Nassau Street, New York, N. Y.*

To the clerk of the city and county of New York; Francis M. Scott, Esq., counsel to the corporation, 2 Tryon row, New York, N. Y.

50 *Waiver of Certification.*

(Title of Proceeding.)

It is hereby stipulated that the foregoing printed papers contain true copies of the notice of appeal, the judgment-roll filed herein, and of all the papers used in the court below in the above-entitled proceeding, and certification in pursuance of section 1353 of the Code of Civil Procedure is hereby waived.

Dated New York, December 20th, 1897.

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator and Appellant,
20 *Nassau Street, New York, N. Y.*

FRANCIS M. SCOTT,
Counsel to Corp'n, Attorney for Respondents,
1 *Tryon Row, New York, N. Y.*

51 *Opinion of Beekman, J.*

(Title of Proceeding.)

BEEKMAN, *J.*:

The relator contends that the commissioners of taxes had no right to consider or estimate any other value of its real estate than the asssesed value in determining the amount of its capital which was subject to taxation under chapter 456 of the Laws of 1857. By the terms of that statute, "the capital stock of every company, liable to taxation, except such part of it as shall have been excepted in the assessment-roll, or as shall have been exempted by law, together with its surplus profits or reserved funds, exceeding ten per cent. of its capital, after deducting the assessed value of its real estate and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this State shall be assessed at its actual value and taxed in the same manner as the other personal and real estate of the county. The learned counsel for the relator has presented a very able and exhaustive brief in support of his contention, but I think the weight of authority in this State is against him. In the case of People *ex rel.* Equitable Gas L. Co. *vs.* Barker (144 N. Y., 94), the

act above referred to was under construction with respect to the very question which is here raised. In delivering the opinion of the court, Andrews, Ch. J., says (p. 100): "But the law governing the taxation of corporations (Laws 1857, ch. 456) requires the valuation of the whole property owned by the corporation, whether real or personal, or both, in order to ascertain the capital which is the subject of taxation (People *ex rel.* Union Trust Co. *vs.* Coleman, 126 N. Y., 433), and from the aggregate is to be deducted the assessed value of the real estate, and the balance is the capital subject to assessment, after deducting debts and any exemptions allowed by law. In assessing the capital of a corporation for the
52 purpose of taxation it is immaterial in which description of property the capital may be invested. Both its real and personal property are to be considered and valued, and from the aggregate value is to be deducted the assessed value of the real estate, for the obvious reason that to that extent a separate taxation is provided (People *ex rel.* Eq. Gas Light Co. *v.* Barker, 66 Hun., 21; affd. in this court in 137 N. Y., 544). In case of corporations it may happen that an undervaluation in the assessment of the real estate as such may be corrected in its valuation as part of the capital, and so the undervaluation may be remedied, and the whole property be subjected to taxation at its real value. The fact, therefore, that the assessed value of the relator's real estate was $1,515,400 does not necessarily show that it was its full value, nor did it, we think, preclude the commissioners from estimating its value for the purpose of ascertaining the capital subject to taxation at its actual value, although it exceeded the assessed value. The act of the commissioners in undervaluing the real estate in its assessment as such did not estop the public nor relieve them of the duty, in ascertaining the value of the capital, to estimate the real estate at its full value. We are not here concerned with any question of inequality of assessment as between the relator and other tax-payers. We hold that the commissioners could legally disregard the assessed value of the real estate in estimating the value of the capital, and the question of legality is the only point now in question." I have quoted quite at length from this case, because it seems to render any further discussion upon the point quite unnecessary. What is there said was intended by the court to be an authoritative and final exposition of the meaning of the statute, as is clearly shown by the final sentence, which sums up the discussion. The case is not overruled by The People *ex rel.* M. R. Co. *v.* Barker (146 N. Y., 304). The court there objected to the particular manner in which the commissioners attempted to value the real estate,
53 characterizing it as founded upon "presumptions figured upon intricate theories," but the case of People *ex rel.* Eq. Gas Light Co. *v.* Barker (*supra*), although twice cited in the opinion, is nowhere referred to with disapproval. Finally, the appellate division in this department has expressed the same rule as one of the established principles in the assessment of corporations for local taxation (People *ex rel.* Subway Co. *v.* Barker, 7 App. Div., 27). In the case at bar the undisputed facts disclosed by the record are that

the relator is a domestic corporation having a paid-up capital of $900,000. Its assets consist of a parcel of land on Cedar street and a building which has been erected thereon, which together have cost about $965,000. Its personal assets, consisting of the equipment of the building and cash on hand, amount to $130,049.02. Its indebtedness is $329,050.28, and the assessed value of the real estate is $600,000. Upon this the commissioners have based an assessment of capital for purposes of taxation amounting to $165,999. This was done by estimating the value of the real estate at its cost, namely: $965,000, and unless in so doing their astion has been arbitrary and unjust, the court will not interfere. It has been properly said that the authority which is vested in the court to review their action "does not mean that the court is to place itself in the position of an assessor, and review the decisions of these officers upon questions of value or appraisement where the officers proceeded upon information or evidence tending to support their decision. The court generally will not look into questions of fact as to the amount or value of the personal estate of a corporation or individual. These are questions for the judgment of the assessors, and their decisions will ordinarily be sustained" (Peo. *ex rel.* Edison E. I. Co. *v.* Barker, 139 N. Y., 55, 60). Is there, then, evidence in the record tending to support the decision of the commissioners that the real estate in question was of the value of $965,000? Cost
54 is evidence of value, especially where, as is claimed here by the relator, the property is unique in character and improved in a way which limits its profitable use to a special and peculiar purpose. The relator does not assume to place a valuation upon the property, nor does it claim that the assessed value is in fact the actual value. While giving the cost in the statement which it submitted to the commissioners, it says that "the building was constructed especially for the business of the N. Y. Clearing House Association, and is not adapted for any other use, so that its market value is not equal to its cost;" but no evidence was presented which indicated what the market value was claimed to be. The affidavit of the president of relator was also submitted, which reiterates this statement, and adds that "in view of the absence of any general market value for a building not fitted for other than a single use, the said building has been properly assessed for taxation at not over $600,000." It is claimed by the relator that under the admissions of the return the commissioners were bound to accept the whole of this statement as a limitation of actual value at the sum of $600,000. The return, however, expressly excepts from the admission "the claim and allegation that the market value of the real estate of the relator was not equal to its cost," and asserts that the contrary was true. It will be observed that the statements of the relator upon the subject are largely argumentative in their nature. Because of the nature of the property, it is claimed that the market value of the property is less than the cost, and for the same reason the assertion is made, not that the property is worth only $600,000, but "has been properly assessed for taxation at not over $600,000." Nowhere does the relator undertake to fix the actual value at any specific

sum. The question was, therefore, fairly open to determination by the commissioners. They had before them elements tending to support the valuation which they affixed to the property; and assuming the absence of a standard of market value, which
55 the relator asserts was the case, it was within their competency to consider the cost as furnishing a guide to a result. They certainly were not bound to adopt the mere conclusions or opinions of the relator, especially as the basis of valuation upon which it insists would import an impairment of its capital of more than fifty per cent. I do not think, therefore, that the action of the commissioners can be characterized as either capricious, arbitrary or unjust, so as to call for any interference with their action by the court. The case is quite different from that of The People *ex rel.* Subway Co. *v.* Barker (7 App. Div., 27). There were circumstances of aggravation there which are without any counterpart in the case at bar, and which make the disposition of that case inapplicable here. It follows from what has been said that the writ must be dismissed, with costs.

56 *Order of Affirmance.*

At a term of the appellate division of the supreme court for the first department, held at the court-house thereof at No. 111 Fifth avenue, in the county of New York, on the 10th day of June, 1898.

Present—

Hon. George C. Barrett, P. J.
Hon. William Rumsey,
Hon. George L. Ingraham,
Hon. Chester B. McLaughlin, } JJ.

(Title of Proceeding.)

The above-named relator having appealed to the appellate division of the supreme court for the first department from the order entered herein in the office of the clerk of the city and county of New York on the 16th day of November, 1897, dismissing the writ of *certiorari* herein and from the judgment entered upon the said order in the office of the clerk of the city and county of New York on the 23d day of November, 1897, and the said appeal having come duly on to be heard, now, after hearing David Willcox, Esq., of counsel for the relator, in support of said appeal, and James M. Ward, Esq., of counsel for the defendants, in opposition thereto, and due deliberation having been had, on motion of John Whalen, corporation counsel, it is

Unanimously ordered that the said order and judgment so appealed from as aforesaid be, and the same hereby are, affirmed with ten dollars ($10) costs and disbursements to the defendants.

Ent. C. H. V. B.

57 *Notice of Appeal to Court of Appeals.*

(Title of Proceeding.)

SIRS: Please take notice that the relator, The New York Clearing House Building Company, hereby appeals to the court of appeals from the order of the appellate division of the supreme court for the first department entered and filed in the office of the clerk of said court on the 15th day of June, 1898, affirming the order entered herein in the office of the clerk of the city and county of New York, on the 16th day of November, 1897, dismissing the writ of *certiorari* herein, and the judgment entered upon said order in the office of the clerk of the city and county of New York on the 23d day of November, 1897.

Dated New York, N. Y., July 13th, 1898.

Yours, etc.,

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator, 20 Nassau Street,
Borough of Manhattan, New York City, N. Y.

To John Whalen, corporation counsel, No. 2 Tryon row, borough of Manhattan, New York city, N. Y.

William Sohmer, Esq., clerk of the county of New York, county court-house, borough of Manhattan, New York city, N. Y.

58 *Affidavit as to Opinion.*

(Title of Proceeding.)

COUNTY OF NEW YORK, *ss:*

David Willcox, being duly sworn, says:

I. He is one of the attorneys for the relator and appellant in the above-entitled proceeding.

II. No opinion accompanied the order of the appellate division of the supreme court for the first department, duly entered herein on the 15th day of June, 1898, affirming the order dismissing the writ of *certiorari* issued herein and the judgment entered thereupon.

DAVID WILLCOX.

Sworn to before me this 20th day of July, 1898.

J. V. SMITH,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

59 *Waiver of Certification.*

(Title of Proceeding.)

It is hereby stipulated that the foregoing printed papers contain true copies of the notice of appeal to the court of appeals, the order

of the appellate division of the supreme court for the first department appealed from, and of all the papers used by the aforesaid appellate division in the above-entitled proceeding, and certification thereof, pursuant to section 1315 of the Code of Civil Procedure, is hereby waived.

Dated New York, July 20, 1898.

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator and Appellant,
20 Nassau Street, New York, N. Y.

JOHN WHALEN,
Corporation Counsel, Attorney for Respondents,
2 Tryon Row, New York, N. Y.

60 Court of Appeals of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Complainant and Appellant, *against* EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Defendants and Appellees. } Taxes of 1896.

In this cause application having been made to the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York, that being the highest court of record in this State in which said cause can be heard, for the allowance of a writ of error to remove said cause to the Supreme Court of the United States for review in accordance with the Constitution and laws of the United States and of the rules and practice of the Supreme Court of the United States, and for the fixing and approving of the bond on the removal of said cause to the Supreme Court of the United States, it is hereby ordered that said writ of error be, and the same is hereby, allowed, and the same may be issued by any officer authorized to issue the same, and the penalty in the bond is hereby fixed at the sum of one thousand dollars, with the Lawyers' Surety Company of New York City as surety thereon.

April 7th, 1899.

ALTON B. PARKER,
Chief Justice of the Court of Appeals of the State of New York.

61 To the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York:

And now comes the People of the State of New York on the relation of The New York Clearing House Building Company, by Opdyke, Willcox & Bristow, its attorneys, and complains that in the record and proceedings and also in the rendition of a judgment of a plea in the suit between The People of the State of New York on the relation of The New York Clearing House Building Company,

relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants, which is in the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had, the said court of appeals having rendered a decision affirming the said judgment theretofore rendered in the said supreme court on the 18th day of June, 1898, affirming the judgment of the special term of the said supreme court rendered on the 23rd day of November, 1897, against the relator and in favor of the defendants for the sum of fifty-seven dollars and fifty cents ($57.50) costs, and dismissing the writ of certiorari sued out by the relator, wherein was drawn in question the validity of a statute of said State and of an authority exercised thereunder, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, all which appear in the records and proceedings in said suit, manifest error hath happened, to the great damage of the said The New York Clearing House Building Company.

62 Wherefore the said The New York Clearing House Building Company, by its attorneys aforesaid, prays for the allowance of a writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for the New York Clearing House Building Company.

63 [Endorsed:] Court of appeals of New York. The People of the State of New York on the relation of The New York Clearing House Building Company, plaintiff and appellant, against Edward P. Barker and others, commissioners of taxes, &c., defendants and appellees. (Taxes of 1896.) (Original.) Petition for writ of error and order allowing same. Opdyke, Willcox & Bristow, attorneys for plaintiff & appellant, No. 20 Nassau street, New York, N. Y.

64 UNITED STATES OF AMERICA, *ss:*

Seal of the U. S. Circuit Court, Northern District N. Y.

The President of the United States of America to the honorable the judges of the court of appeals of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of New York *ex rel.* The New York Clearing House Building Company, relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants (taxes of 1896), wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question

the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the
65 construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The New York Clearing House Building Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

W. S. DOOLITTLE,
Clerk of the United States Circuit Court,
North. District of New York,
By C. W. HIGGISON, *Deputy.*

Allowed by—
ALTON B. PARKER,
Chief Justice of the Court of Appeals
of the State of New York.

66 UNITED STATES OF AMERICA, *ss:*

To Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the New York court of appeals, in a suit wherein The People of the State of New York *ex rel.* The New York Clearing House Building Company are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alton B. Parker, chief justice of the court

of appeals of New York, this 29th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of New York.

67 STATE OF NEW YORK, } ss.:
County of New York, }

On this 3rd day of May, in the year of our Lord one thousand eight hundred and ninety-nine, personally appeared John Monaghan before me, the subscriber, a notary public in and for the county of Kings, certificate filed in New York county, and makes oath that he delivered true copies of the within citation to James L. Wells, commissioner of taxes, &c., at 145 Broadway, Manhattan, N. Y. city; Theodore Sutro, commissioner of taxes, &c., at 280 Broadway, Manhattan, N. Y. city, and Edward P. Barker, commissioner of taxes, &c., at Hotel Bayard, 1703 Broadway, Manhattan, N. Y. city.

That said copies were all delivered to the aforesaid on the 2nd day of May, 1899.

JOHN MONAGHAN.

Sworn to and subscribed the 3rd day of May, A. D. 1899.

[Seal of J. V. Smith, Notary Public, Kings County.]

J. V. SMITH,
Notary Public, Kings County.

Cert. filed in New York county.

68 [Endorsed:] Court of appeals of New York. The People of the State of New York *ex rel.* The New York Clearing House Building Company, pl'ff in error, against Edward P. Barker and others, commissioners of taxes, &c., def'ts in error. (Taxes 1896.) Original. Citation and proof of service. Opdyke, Willcox & Bristow, attorneys for pl'ff in error, No. 20 Nassau street, New York, N. Y. Service this day of a copy of the within citation is hereby admitted. Dated N. Y., May —, 1899. A copy of the within paper has been this day received at the office of the corporation counsel. May 2, 1899. John Whalen, corporation counsel.

69 In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Relator,
against
EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Defendants. } Taxes of 1896.

The relator assigns the following errors in the final decision of this court, filed herein upon March 13, 1899:

I. The court erred in holding and deciding that the relator was not entitled to the remedy and relief prayed for in its petition and in affirming the order of the supreme court denying the prayer of said petition and dismissing the writ of certiorari theretofore issued pursuant to said petition.

II. The court erred in not ordering and adjudging that the order of the supreme court denying the prayer of the petition and dismissing the writ of certiorari be reversed, and that the prayer of said petition be granted and the assessment therein specified be stricken from the roll.

III. The court erred in denying to the relator the rights claimed by it in its said petition under the fourteenth amendment to the Constitution of the United States and in denying to the relator any relief on that ground.

IV. The court erred in not holding and adjudging that
70 the assessment set forth in the relator's petition was contrary to the provision of the fourteenth amendment to the Constitution of the United States securing to the relator the equal protection of the laws, and that the relator was entitled, upon that ground, to judgment striking said assessment from the roll.

V. The court erred in deciding in favor of the validity of the statutes of the State of New York and the authority exercised under said statutes pursuant to which the assessment specified in the relator's petition was imposed, notwithstanding that their validity was drawn in question on the ground of their being repugnant to the Constitution of the United States.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator.

71 [Endorsed:] N. Y. court of appeals. The People of the State of New York on the relation of The New York Clearing House Building Company, relator, against Edward P. Barker and others, commissioners of taxes, &c., defendants. (Taxes of 1896.) (Original.) Assignment of errors. Opdyke, Willcox & Bristow, attorneys for relator, No. 20 Nassau street, New York, N. Y.

72 Know all men by these presents that we, The New York Clearing House Building Company, as principal, and The Lawyers' Surety Company of New York City, as surety, are held and firmly bound unto Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, in the full and just sum of one thousand dollars, to be paid to the said Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, their certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors or assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a session of the court of appeals of New York, in a suit depending in said court between The People of the State of New York *ex rel.* The New York Clearing House Building Company, relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants, a decision was rendered against the said relator and affirming the judgment of the supreme court of the State of New York, the writ of certiorari issued in said suit, and the said relator, The New York Clearing House Building Company, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decision in the aforesaid suit, and a citation directed to the said Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and
73 assessments of the city and county of New York, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said The New York Clearing House Building Company shall prosecute its said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE NEW YORK CLEARING HOUSE BUILDING CO.,
By G. G. WILLIAMS. [SEAL.]
THE LAWYERS' SURETY COMPANY OF NEW YORK,
[SEAL.] By THOMAS HUNT, *2d Vice-President.*
Attest: JOEL RATHBONE, *Secretary.*

Sealed and delivered in presence of—
H. G. HINTON,
As to L. S. Co.

Approved by—
ALTON B. PARKER,
Chief Justice of the Court of Appeals of New York.

74 Form No. 209.

STATE OF NEW YORK, } ss:
County of New York, }

On the 30th day of March, in the year 1899, before me personally came Thomas Hunt, to me known, who, being by me duly sworn, did depose and say, that he resided in the city of New York; that he is the 2d vice-president of the Lawyers' Surety Company of New

York, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893.

[SEAL.] H. G. HINTON,
Notary Public, Kings County, N. Y.

Certificate filed in N. Y. Co.

At a stated meeting of the board of directors of the Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 and 36 Liberty street, in said city, on the 21st day of April, 1897, on motion, it was unanimously

"Resolved, That the president, the vice-president, the acting president or the second vice-president be, and either of them is, hereby authorized and empowered to sign, execute and deliver any and all bonds or undertakings for or on behalf of the company, and to attach thereto the seal of the corporation, the same to be attested by the secretary or the acting secretary."

COUNTY OF NEW YORK, *ss:*

I, Joel Rathbone, secretary of the Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 30th day of March, 1899.

[SEAL.] JOEL RATHBONE, *Secretary.*

75 [Endorsed:] N. Y. supreme court. The People of the State of New York *ex rel.* The New York Clearing House Building Company, plaintiff in error, against Edward P. Barker and others, commissioners of taxes and assessments, &c., defendants in error. (Taxes of 1896.) Bond.

76 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

I, W. H. Shankland, clerk of the court of appeals of the said State of New York, do hereby certify that the annexed papers constitute the original return and the whole thereof upon which the said court of appeals acted in rendering judgment herein, together with the remittitur of said court and the petition, order, writ of error, citation, copy of bond, and assignment of error to the United States Supreme Court herein.

Seal State of New York
Court of Appeals.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this twenty-ninth day of April, A. D. 1899.

W. H. SHANKLAND,
Clerk Court of Appeals, State of New York.

Endorsed on cover: File No., 17,398. New York court of appeals. Term No., 288. The People of the State of New York *ex rel.* The New York Clearing House Building Company, plaintiff in error, vs. Edward P. Barker, Theodore Sutro, & James L. Wells, commissioners of taxes & assessments of the city and county of New York. Filed May 6th, 1899.

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of THE NEW YORK CLEARING HOUSE BUILDING COMPANY, plaintiff in error,

AGAINST

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

No. 51
October Term, 1900.
(Taxes of 1896.)

BRIEF,
for plaintiff in error.

Upon July 16, 1896, a writ of *certiorari* was duly sued out in the New York Supreme Court pursuant to the Laws of New York of 1880, Chap. 269, and the Consolidation Act (Laws of 1882 Chap. 410, Sec. 821), by the New York Clearing House Building Company, to review the action of the Commissioners of Taxes and Assessments of the City and County of New York in assessing the relator upon its *personal property* (p. 28) for the year 1896, at the sum of $165,999. At the Special Term the writ was dismissed (p. 29; 23 Misc., 192). The opinion of the Court is at pp. 30-33. The relator appealed (pp. 29, 30) to the Appellate Division of the Supreme Court which affirmed the judgment of the Special Term without opinion (p. 33; 31 App. Div., 315). The relator then appealed to the Court of Appeals (p. 34) which again affirmed the judgment without opinion (p. 2; 158 N. Y., 709). The relator, thereupon, sued out this writ of error (pp. 35-37).

STATEMENT.

Pursuant to law, the relator duly filed with the Commissioners a Statement showing its condition for the purpose of assessment for taxation upon its capital stock for the year 1896 (pp. 9, 10, 18, 21, 22). This showed that the relator had personal property amounting to $130,049.02, and that its indebtedness amounted to $329,050.28. The relator was entitled by law to have those debts deducted from any assessment against it for personal property (People *ex rel.* Second Ave. Railroad Co. vs. Barker, 141 N. Y., 196; People *ex rel.* Cornell Steamboat Co. vs. Dederick, 161 N. Y., 195). The relator's debts, accordingly, exceeded the total amount of its *personal* property by the sum of $199,001.26.

The difference between the relator and the Commissioners arose by reason of the ownership by the relator of a certain parcel of real estate. Under the statutory provision requiring that they assess the same "at its full and true value" (1 R. S., 393, Sec. 17; 9th Ed., 1685; *infra*, p. 11), or in the terms of the Consolidation Act "the sum for which such property under ordinary circumstances would sell" (Laws of 1882, Ch. 410, Sec. 814; *infra*, p. 11), the Commissioners had already assessed this parcel of real estate for the year 1896 at $600,000 (pp. 6, 9, 11, 13). In the aforesaid Statement for the purpose of assessment, the relator stated that sum—$600,000—as the value of the real estate in question (pp. 9, 11, 22, 24).

The Commissioners disregarded this statement, and also the fact that they had just found the "full and true value" (1 R. S., 393, Sec. 17; 9th Ed., 1685)—"the sum for which such property under "ordinary circumstances would sell" (Consolidation Act, Sec. 814)—of this parcel of real estate to be $600,000, and without any reason therefor which appears in the return, found that its "actual value" was its cost to the relator, namely, $965,000 (pp. 19, 20). The Commissioners were thus in the position of finding that the "full and true value" (1 R. S., 393, Sec. 17; 9th Ed., 1685) of this real estate was $600,000, but that its "actual value" (pp. 19, 20; Laws of 1857, Chap. 456, Sec. 3) was $965,000. The difference between these sums was $365,000. From this the Commissioners deducted the balance of the relator's indebtedness over and above the amount of its personal property as above stated, namely, $199,001. The remainder was $165,999. The Commissioners assessed the relator in that amount upon its "taxable *personal property* in this city" (p. 28).

Statement.

The case arose under the statutes prior to the present Tax Law (Laws of 1896, Ch. 908). The action of the Commissioners was based upon the claim that real property owned by corporations is assessable differently from that owned by individuals. The statute upon which this claim rests (Laws of 1857, Ch. 456, Sec. 3, *infra*, p. 11), provides that "the capital stock of every company liable to "taxation, except such part of it as shall have been excepted in the "assessment roll, or as shall have been exempted by law, together "with its surplus profits or reserve funds exceeding ten per cent of "its capital, after deducting the assessed value of its real estate, and "all shares of stock in other corporations, actually owned by such "company, which are taxable upon their capital stock under the "laws of this state, shall be assessed at its actual value, and taxed in "the same manner as the other personal and real estate of the "county."

It is settled that this is not a franchise tax but purely a tax upon the property of a corporation exclusive of its franchises (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433; People *ex rel.* Manhattan Co. vs. Barker, 146 N. Y., 304, 312; s. c., 152 N. Y., 417, 453). It is also settled that the "capital stock" thus taxed is the aggregate property of the company, less the deductions allowed, and not the share stock of the company (Peo. *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433). The tax is under New York practice and in manner or form a tax upon personal property (p. 28).

An individual who owns real estate is, of course, assessable upon the same merely as real estate (1 R. S. 389; 9th Ed. 1680), but the claim of the Commissioners is that a corporation owning the same real estate is assessable thereon not merely as real estate but also upon any margin of difference between the assessed and the actual value of such real estate as *personal property*. The relator claimed in its petition for the writ of *certiorari* (p. 7) that this construction of the statute was contrary to the Constitution because it denied to the relator the equal protection of the laws, and it has constantly insisted upon that claim.

Assignment of Errors.

The record (p. 39) contains a full assignment of errors as follows :

I. The court erred in holding and deciding that the relator was not entitled to the remedy and relief prayed for in its petition and in affirming the order of the supreme court denying the prayer of said petition and dismissing the writ of *certiorari* theretofore issued pursuant to said petition.

II. The court erred in not ordering and adjudging that the order of the supreme court denying the prayer of the petition and dismissing the writ of *certiorari* be reversed, and that the prayer of said petition be granted and the assessment therein specified be stricken from the roll.

III. The court erred in denying to the relator the rights claimed by it in its said petition under the fourteenth amendment to the Constitution of the United States and in denying to the relator any relief on that ground.

IV. The court erred in not holding and adjudging that the assessment set forth in the relator's petition was contrary to the provision of the fourteenth amendment to the Constitution of the United States securing to the relator the equal protection of the laws, and that the relator was entitled, upon that ground, to judgment striking said assessment from the roll.

V. The court erred in deciding in favor of the validity of the statutes of the State of New York and the authority exercised under said statutes pursuant to which the assessment specified in the relator's petition was imposed, notwithstanding that their validity was drawn in question on the ground of their being repugnant to the Constitution of the United States.

FIRST.

The action of the Commissioners subjects the relator to a rule of taxation more onerous than that applying to an individual owning the same property.

It is settled that the tax imposed upon corporations by Chapter 456 of the Laws of 1857, is a tax upon their property exclusive of their franchises—the franchises are not the subject of taxation (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y. 433; People *ex rel.* Manhattan Co. vs. Barker, 146 N. Y., 304, 312, s. c. 152 N. Y. 417, 453). In the case of individuals, the ownership of real estate subjects the owner simply to taxation upon the real estate (1 R. S. 389, 9th Ed. 1680). The present claim is that the statute in question subjects corporations which own real estate not only to taxation upon the real estate as such, but also to taxation upon a part of its value as *personal* property.

If this be so, it is obvious that an individual who owns real estate is subject to one rule of taxation, while a corporation which owns precisely similar real estate is subjected, solely on account of such ownership, to another and greatly more burdensome rule of taxation. In People *ex rel.* Equitable Gas Light Co. vs. Barker (144 N. Y., 94) this is held by the Court of Appeals to be the purpose and result of the statute. The court, after saying that the statutes require all property to be assessed at its actual value (p. 99) adds, "but it is well known that this duty cast upon assessors "is seldom performed, and that the taxation of real estate through- "out the state is generally upon an assessment which represents "but part of its actual value. Assessment at the full value is the "exception and not the rule. * * Real and personal property "are to be separately assessed. *In case of an individual assessed* "*for both, if the realty be undervalued, the loss cannot be made* "*up by adding it to the assessment of the personalty.* * * *In case* "*of corporations it may happen that an undervaluation in the assess-* "*ment of the real estate as such will be corrected in its valuation as* "*part of the capital, and so the undervaluation may be remedied, and* "*the whole property be subjected to taxation at its real value*" (pp. 99, 100).

It is settled that the courts will take judicial notice of the fact that real property generally is assessed below its

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actual value. As said in Cummings vs. National Bank, 101 U. S. 153, 162, "it is a matter of common observation that in "the valuation of real estate this rule" (of assessment at full value) "is habitually disregarded." The same thing is held in Dundee Co. vs. Parrish, 24 Fed. Rep., 197, 202; Railroad Co. vs. Board, 85 Fed. Rep., 302; Nashville Co. vs. Taylor, 86 Fed. Rep., 168; People *ex rel.* Sutphen vs. Feitner, 27 Misc., 384.

The construction given the statute by the Commissioners, therefore, imposes a more burdensome rule of taxation upon corporations than upon individuals by reason of ownership of similar property. The facts of this case fully establish this. If the relator were a natural person it would be assessed, by reason of owning this piece of real estate, at $600,000, and no more. Because it is a corporation it is, however, assessed by reason of such ownership in the sum of $365,000 more. The entire assessment for personal property arises from the fact that this piece of real estate is owned by a corporation and not by an individual—and that, too, although, as just said, the subject of assessment is *not* the franchises, but the *other* property of the corporation (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433; People *ex rel.* Manhattan Co. vs. Barker, 146 N. Y., 304, 312; s. c., 152 N. Y., 417, 453).

If the relator were an individual it would not be subject to this assessment. It is, therefore, obvious that the relator is subjected by reason of owning this piece of property to a rule of taxation more onerous than that which would apply if it were an individual.

SECOND.

The action of the Commissioners deprives the relator of the equal protection of the laws.

The Fourteenth Amendment to the Constitution of the United States provides (Section 1) that "no state shall * * deny to any "person within its jurisdiction the equal protection of the laws."

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This prohibition is binding alike upon all branches of the state government (Blake vs. McClung, 172 U. S., 239, 260; Abbott vs. Tacoma, 175 U. S., 409, 413), and it has been repeatedly held that corporations are persons within its meaning (Santa Clara County vs. Southern Pacific Co., 118 U. S., 394; Pembina Co. vs. Pennsylvania, 125 U. S., 181; Missouri Co. vs. Mackey, 127 U. S., 205; Home Ins. Co. vs. New York, 134 U. S., 594, 606; Charlotte Railroad Co. vs. Gibbes, 142 U. S., 386, 391; Gulf Co. vs. Ellis, 165 U. S., 150, 154; Smyth vs. Ames, 169 U. S., 466; Western Union Co. vs. Myatt, 98 Fed. Rep., 335; Hargraves Mills vs. Harden, 25 Misc., 665). Obviously a statute which should tax one person at a greater rate than another by reason of ownership of property identically similar in character, would deny to the person thus taxed at the greater rate the equal protection of the laws, and would, therefore, be unconstitutional.

Classification for purposes of taxation, in order to be constitutional, must distinguish between different kinds of property, not between different ownership of the same kind of property (San Bernardino Co. vs. Southern Pac. R. R., 118 U. S., 417, 422; Gulf Co. vs. Ellis, 165 U. S., 150, 165; Western Union Co. vs. Indiana, 165 U. S., 304; Magoun vs. Illinois Bank, 170 U. S., 283, 294, 301; County of San Mateo vs. Southern Pac. R. R. Co., 13 Fed. Rep., 722, 737, 744; County of Santa Clara vs. Southern Pac. R. R., 18 Fed. Rep., 385, 408, 409, 429; affirmed in 118 U. S., 394; Northern Pac. R. Co. vs. Walker, 47 Fed. Rep., 681, 685; Fraser vs. McConway Co., 82 Fed. Rep., 257; Matter of McPherson, 104 N. Y., 306, 318; Commonwealth vs. Edgerton Coal Co., 164 Pa. St., 284).

> The constitutional provision "means that no person or "class of persons shall be denied the same protection of the "laws which is enjoyed by other persons or other classes "in the same place and under like circumstances." (Missouri vs. Lewis, 101 U. S., 22, 31).
>
> "The rule of equality * * requires the same means "and methods to be applied impartially to *all* the constitu- "ents of each class, so that the law shall operate equally "and uniformly upon all persons in similar circumstances." (Kentucky Railroad Tax Cases, 115 U. S., 321, 337; to the same effect is Barbier vs. Connolly, 113 U. S., 27, 32).

Second. The action of the Commissioners deprives the relator of the equal protection of the laws.

It is true that this court has recognized the power of the states to select corporations as a particular class for taxation *upon their franchises.* In each instance, however, the tax has been upheld upon the ground that a state legislature can impose any burden it sees fit upon the *corporate franchise, license or privilege* which it creates and confers, and that such legislation is "not open to objection if all such bodies are treated alike "under similar circumstances and conditions, in respect to the *privi-* "*leges* conferred upon them and the *liabilities* to which they are "subjected" (Home Ins. Co. vs. New York, 134 U. S., 594, 606, 607; Kentucky Railroad Tax Cases, 115 U. S., 321, 337; Maine vs. Grand Trunk Co., 142 U. S., 217, 229; Plummer vs. Coler, 178 U. S., 115, 128). This court has adjudged also that the states may select railroad property as a class of property to be taxed separately because of its peculiar and inherent nature and its essential difference from other property (Kentucky Railroad Tax Cases, 115 U. S., 321, 337, 339; Columbus Southern Co. vs. Wright, 151 U. S., 470).

But these cases have no present application, because the assessment is conclusively held not to be an assessment upon franchises (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433; People *ex rel.* Manhattan Co. vs. Barker, 146 N. Y., 304, 312; s. c., 152 N. Y., 417, 453); nor is it upon any particular species of property, but generally upon the property of corporations. And it is elementary that when a method of taxation is contrary to constitutional principles, it is no more permissible because the subject of it to a corporation, either foreign, (Gloucester Ferry Co. vs. Pennsylvania, 114 U. S., 196, 204) or domestic (Philadelphia Co. vs. Pennsylvania, 122 U. S., 326, 344). Any discrimination based upon mere personality is contrary to the amendment (Gibson vs. Mississippi, 162 U. S., 565). "It is apparent that the mere fact of classification is not "sufficient to relieve a statute from the reach of the equality clause "of the Fourteenth Amendment, and that in all cases it must ap- "pear not only that a classification has been made, but also that it "is one based upon some reasonable ground—some difference which "bears a just and proper relation to the attempted classification and "is not a mere arbitrary selection" (Gulf Co. vs. Ellis, 165 U. S., 150, 165, 166; Western Union Co. vs. Indiana, 165 U. S., 304). "The question always is, when a classification is made, whether

Second. The action of the Commissioners deprives the relator of the equal protection of the laws.

"there is any reasonable ground for it, or whether it is only and "simply arbitrary, based upon no real distinction and entirely un- "natural" (Nicol vs. Ames, 173 U. S., 509, 521).

Accordingly, it is settled by authority that the method of assessment employed here violates a constitutional requirement of uniformity in taxation. In Cummings vs. National Bank, 101 U. S., 153, 157, 158, it was shown that assessors adopted a uniform rule by which they assessed real estate at one-third of its value, but bank shares at their full value. The constitution required uniform taxation. The court said that, "when a rule or system of "valuation is adopted by those whose duty it is to make the as- "sessment, which is designed to operate unequally and to violate a "fundamental principle of the Constitution, and when this rule is "applied not solely to one individual, but to a large class of indi- "viduals or corporations, equity may properly interfere to restrain "the operation of this unconstitutional exercise of power." Of course the principle is applicable equally when the objectionable exercise of power is sought to be reviewed directly, as in the present proceeding. These principles are recognized also in National Bank vs. Kimball, 103 U. S., 732; Supervisors vs. Stanley, 105 U. S., 305; Stanley vs. Supervisors, 121 U. S., 535, 550; Albuquerque Bank vs. Perea, 147 U. S., 87.

> In Taylor vs. Louisville Co., 88 Fed. Rep., 350, 60 U. S. App., 166, affg. 86 *Id.*, 168, the constitution of Tennessee declared that all property should be taxed "according to its value, * * so that "taxes shall be equal and uniform throughout the state." It appeared that it was the uniform practice throughout the state to assess real property at not exceeding seventy-five per cent of its value. It was held that an assessment of railroad property at its full value violated the constitutional requirement of uniformity. The same thing is held in Railroad and Telephone Cos. vs. Board, 85 Fed. Rep. 302; Cocheco Co. vs. Strafford 51 N. H., 455; Randell vs. Bridgeport, 63 Conn., 321; *Ex parte* Fort Smith Co., 62 Ark., 461; Board of Bureau County vs. Chicago R. R. Company, 44 Ill., 229; Chicago Co. vs. Board, 54 Kans., 781.

There is no case in this court sustaining a statute imposing a tax upon the *property* of corporations (as distinguished from a tax upon their *franchises*), at a higher rate than that laid upon similar property of natural persons, and the cases in the state

Second. The action of the Commissioners deprives the relator of the equal protection of the laws.

courts distinctly rule that such a statute cannot be upheld (Mayor vs. Stonewall Insurance Co., 53 Ala., 570, 580, 581; Board of Bureau Co. vs. Chicago Railroad Co., 44 Ill., 229; Standard Insurance Co. vs. Assessors, 95 Mich., 466; State Board of Assessors vs. Central R. R. Co., 48 N. J. Law, 146, 304; Fox's Appeal, 112 Pa. St., 337, 353; Nichols vs. Walter, 37 Minn., 264, 272; Vermont Loan and Trust Co. vs. Whithed, 2 No. Dak., 82, 94).

Clearly these rules cover the present case; for a distinction is made against the relator by taxing its property other than franchises at an unequal rate merely *because* it is a corporation and not a natural person. That is a rule of classification which violates the constitutional guaranty by depriving the relator of the equal protection of the laws.

It, therefore, follows that when a corporation has no assessable *personal* property, as is the case with the relator, it can no more be taxed for *personal* property than can an individual similarly situated. For that would deny to it protection of the laws equal to that enjoyed by natural persons, and would construe the statute so as to render it unconstitutional.

CONCLUSION.

The judgment should be reversed.

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Counsel for plaintiff in error.

STATUTES OF THE STATE OF NEW YORK.

1 Revised Statutes, 389, Sec. 1, 9th ed., p. 1680.

"Every person shall be assessed in the town or ward "where he resides when the assessment is made, for all lands "then owned by him within such town or ward, and occu- "pied by him, or wholly unoccupied."

Id. Sec. 17, 9th ed., p. 1685.

"All real and personal estate liable to taxation shall be "estimated and assessed by the assessors at its full and true "value, as they would appraise the same in payment of a "just debt due from a solvent debtor."

Laws of 1857, Chapter 456, Section 3.

"The capital stock of every company liable to taxation, "except such part of it as shall have been excepted in the "assessment roll, or as shall have been exempted by law, "together with its surplus profits or reserved funds, exceed- "ing ten per cent of its capital, after deducting the assessed "value of its real estate, and all shares of stock in other cor- "porations, actually owned by such company, which are "taxable upon their capital stock under the laws of this "state, shall be assessed at its actual value and taxed in the "same manner as the other personal and real estate of the "county."

Consolidation Act, Chapter 410, Laws of 1882, Sec. 814:

"It shall be the duty of the deputy tax commissioners, "under the direction of the commissioners of taxes and "assessments, to assess all the taxable property in the "several districts that may be assigned to them for that "purpose by said commissioners, and they shall furnish to "them, under oath, a detailed statement of all such property "showing that said deputies have personally examined each "and every house, building, lot, pier, or other assessable "property, giving the street and ward map number of such "real estate embraced within said districts, together with "the name of the owner or occupant, if known; also, in their "judgment, the sum for which such property, under ordinary "circumstances, would sell, with such other information, in "detail, relative to personal property or otherwise, as the "said commissioners may, from time to time, require. Such "deputies shall commence to assess real and personal estate "on the first Monday of September in each and every "year."

No. 51.

FILED
OCT 19 1900
CLERK

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

Filed Oct. 19, 1900.

OCTOBER TERM, 1900.

No. 51.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of THE NEW YORK CLEARING HOUSE BUILDING COMPANY,

Plaintiff in Error,

against

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

Brief in Reply,

for Plaintiff in Error.

(TAXES OF 1899.)

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Counsel for Plaintiff in Error.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of the New York Clearing House Building Company, Plaintiff in error,

AGAINST

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

No. 51.
October Term, 1900
(Taxes of 1896).

BRIEF IN REPLY,
for plaintiff in error.

The greater part of the brief for defendants in error consists of matter which was appropriate to the questions arising in the state courts, but has no bearing whatever upon the point now involved. The point is that (1) *the action of the Commissioners subjects the relator, merely because it is a corporation, to a rule of taxation more onerous than that applying to an individual owning the same property,* and that (2) *the relator is thus deprived of the equal protection of the laws.*

The position of the defendants in error as to this is that, "it would "be competent for that body (the legislature) to *tax* corporations on "their real estate and *relieve* individuals" (p. 16), and their brief con- "cedes that it was never the *purpose or intent* of the system in the "state of New York to assess for purposes of taxation individuals and "corporations *in the same way*" (p. 17). Taken in connection with the fact that the assessment is not upon franchises but purely

upon the property of the corporation exclusive of franchises (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433 ; People *ex rel.* Manhattan Co. vs. Barker, 146 N. Y., 304, 312; s. c. 152 N. Y., 417, 453), this fully concedes that the statute attempts to classify the property assessed solely with reference to its ownership—namely, by individuals or by corporations, and to apply a more onerous rule of taxation to the same property if it be owned by a corporation than that to which it would be subject if it were owned by an individual. It may be observed that the claim of the defendants in error that corporations may be subjected to special rules of assessment different from those applying to individuals owning the same property upon the principle of "classification," completely misses the force of the Fourteenth Amendment. That provides that "no state shall * * deny to any person within its "jurisdiction the equal protection of the laws." Corporations are persons within its meaning (Brief for plaintiff in error, p. 7). Its force is the same, therefore, as if the provision were that equal protection shall be afforded to all persons, including both natural and artificial persons. In the face of this the claim that the legislature can deprive artificial persons of protection equal to that afforded to natural persons by "classifying" the former by themselves is obviously absurd. Such a distinction is exactly what the amendment prohibits.

The inequality of protection which the defendants in error concede clearly follows from the very language of the statute (Laws of 1857, Ch. 456, Sec. 3). It provides for assessment of the corporation upon the "*actual*" value of all its property, deducting the real estate at its "*assessed*" value merely. This clearly recognizes that the *assessed* value of the real estate will be less than its *actual* value and provides that a corporation shall be taxed upon the margin of difference as personal property, while an individual is subject to no such tax.

> The brief for the defendants in error refers to the fact that corporations "are allowed by way of arbitrary deduc- "tion, surplus profits or reserve funds exceeding ten per "cent of its capital" (p. 17). This has no application in the present case, because the relator had no such surplus. Accordingly the brief for defendants in error correctly states that it was entitled to no such deduction, "because the re- "lator had no surplus after deducting its debts of $329,050" (p. 5). In point of fact, therefore, no such deduction was made in this case.

The Court of Appeals, too, has held that this unequal protection of the laws is precisely the purpose and effect of the stat-

ute (People *ex rel.* Equitable Gas Light Co. vs. Barker, 144 N. Y., 94). The court after saying that the statutes require all property to be assessed at its actual value (p. 99), adds, "but *it is well known* that this duty cast upon assessors is seldom "performed, and *that the taxation of real estate throughout the "state is generally upon an assessment which represents but part "of its actual value. Assessment at the full value is the exception "and not the rule.* * * Real and personal property are to "to be separately assessed. *In case of an individual assessed for "both, if the realty be undervalued, the loss cannot be made up by ad- "ding it to the assessment of the personalty.* * * *In case of cor- "porations it may happen that an undervaluation in the assessment of "the real estate as such will be corrected in its valuation as part of "the capital, and so the undervaluation may be remedied, and the "whole property be subjected to taxation at its real value*" (pp. 99, 100).

The statute, as applied by the Commissioners, therefore, imposes a more burdensome rule of assessment upon corporations than upon individuals by reason of ownership of similar preperty. The facts of the case fully establish this. If the relator were a natural person, it would be assessed by reason of owning this piece of real estate at $600,000 and no more. Because it is a corporation it is, however, assessed by reason of such ownership of *real estate* in the sum of $165,000 more for *personal property* (Rec., p. 28). The entire assessment for *personal* property arises from the fact that this piece of *real estate* is owned by a corporation and not by an individual—and that, too, although, as just said, the subject of assessment is not the franchises, but the other property of the corporation (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433).

The facts in this case, therefore, show exactly the manner in which and the extent to which the relator has been deprived of the equal protection of the laws. Inasmuch, then, as the Court of Appeals has held and the defendants in error concede that this deprivation is the natural and actual effect of the statutes, as administered by the assessing officers, the suggestion of the brief of the defendants in error that there is nothing in the record showing general inequality in assessments as between corporations and individuals (pp. 23–27), is idle. This is especially the case in view of the other suggestion of the brief that in any case inequality would be no ground for relief (pp. 20, 21). The statute is a rule of assessment at full,

actual, value in the case of corporations which does not apply in the case of individuals. Its consequences are shown by the facts here. The grievance of the relator is that it has been deprived of protection of the laws equal to that afforded to an individual under similar circumstances.

So far as concerns the effect of the statute generally, it may be added, however, that in the case of all corporations owning real estate consequences similar to the present must follow from the practice of assessing real estate at less than its actual value, and that not merely has the Court of Appeals declared that this practice prevails in New York, but that this court also knows judicially that it is general throughout the country. In Cummings vs. National Bank, 101 U. S., 153, 162, after discussing such a practice prevailing in the state of Ohio, it said, "it is "proper to say, in extenuation of the rule of primary valuation of "different species of property developed in this record, that it is "not limited to the state of Ohio, or to part of it. The constitu- "tions and the statutes of nearly all the states have enactments de- "signed to compel uniformity of taxation and assessments at the "actual value of all property liable to be taxed. The phrases "'salable value,' 'actual value,' 'cash value,' and others used in the "directions to assessing officers, all mean the same thing, and are "designed to effect the same purpose. Burroughs, Taxation, p. 227, "sect. 99. *But it is a matter of common observation that in the "valuation of real estate this rule is habitually disregarded.* And "while it may be true that there has not been in other states such "concerted action over a large district of country by the primary as- "sessors in fixing the precise rates of departure from actual value, as "is shown in this case, it is believed that the valuation of real "estate for purposes of taxation rarely exceeds half of its current "salable value. If we look for the reason for this common "consent to substitute a custom for the positive rule of the statute, "it will probably be found in the difficulty of subjecting personal "property, and especially invested capital, to the inspection of the "assessor and the grasp of the collector. The effort of the land- "owner, whose property lies open to view, which can be subjected "to the lien of a tax not to be escaped by removal, or hiding, to "produce something like actual equality of burden by an under- "valuation of his land, has led to this result. But whatever may "be its cause, when it is recognized as the source of manifest in- "justice to a large class of property around which the Constitution

" of the state has thrown the protection of uniformity of taxation " and equality of burden, the rule must be held void, and the in- " justice produced under it must be remedied so far as the judicial " power can give remedy."

So, too, it is obvious that there is nothing in the suggestion of the defendants in error that if the Commissioners complied with all the statutes, no injustice would result (pp. 17–19). The statute now involved (Laws of 1857, Ch. 456, Sec. 3), the Court of Appeals and this court agree that the assessing officers do *not* comply with the rule of assessment at full value in the case of individuals. The record shows the result flowing from the administration of the statutes in accordance with the manner sanctioned by the Court of Appeals and upheld by the defendants in error, to be that the relator is deprived of the equal protection of the laws. Whether that result follows from the statute or from the action of the officials in administering the statute, the assessment equally offends against the constitutional guaranty of equal protection (People vs. Weaver, 100 U. S., 539; Whitbeck vs. Mercantile Bank, 127 U. S., 193). " These prohibitions (of the Fourteenth Amendment) " extend to all acts of the state whether through its legislative, its " executive or its judicial authorities " (Scott vs. McNeal, 154 U. S., 34, 45; *Ex parte* Virginia, 100 U. S., 339, 347; Yick Wo vs. Hopkins, 118 U. S., 356, 373; Chicago Co. vs. Chicago, 166 U. S., 226, 234.

There is, therefore, no question that this corporation is subjected to a more onerous rule of assessment than an individual would be by reason of exactly the same property. Indeed, the defendants in error affirmatively claim (Brief, p. 16) that it is entirely competent for the legislature to make such a distinction based solely upon the personality of the owner. But it needs no argument to show that this deprives the relator of the equal protection of the laws.

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Of Counsel.

No. 51.

NOV 3 1900.

JAMES H. MCKENNEY, CLERK

Sup. Ct. U.S. Opdyke & Willcox for P.

Supreme Court of the United States.

Filed Nov. 3, 1900.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

OCTOBER TERM, 1900.

No. 51.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of THE NEW YORK CLEARING HOUSE BUILDING COMPANY,

Plaintiff in Error,

against

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York,

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Reply,

for Plaintiff in Error to "Synopsis of Oral Argument" of Defendants in Error.

(TAXES OF 1899.)

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Counsel for Plaintiff in Error.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of the New York Clearing House Building Company,
Plaintiff in error,

AGAINST

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

No. 51. October Term, 1900, (Taxes of 1896).

REPLY TO "SYNOPSIS OF ORAL ARGUMENT" FILED BY DEFENDANTS IN ERROR.

The defendants in error, in their first brief sought to sustain the method of assessment now in question upon the grounds that under the constitution and statutes of New York "it would "be competent for (the legislature) to *tax* corporations "on their real estate and *relieve* individuals" (p. 16); "it "was never the *purpose* or *intent* of the system in the state "of New York to assess for purposes of taxation individuals and cor- "porations *in the same way*" (p. 17), and that, therefore, corporations had been "classified" (p. 17) for taxation upon the amount of their real and personal property under rules differing from those applying to natural persons. After reading the Brief in Reply for the plaintiff in error, counsel for defendants in error seem to have seen that these contentions of their brief concede that the method of assessment in this case is unconstitutional for the reason that the

Fourteenth Amendment secures to artificial persons the same protection of the law as that afforded to natural persons (Brief in Reply, p. 2), and, therefore, it is unconstitutional to classify artificial persons by themselves for more onerous taxation than natural persons by reason of ownership of identically similar property.

Accordingly counsel for defendants in error produced and filed at the argument a brief styled "Synopsis of Oral Argument," in which their position is very radically changed. Their contention is no longer that it is intended by the system prevailing in New York that corporations shall be assessed differently from individuals and that it is competent for the State to thus deprive the plaintiff in error of the equal protection of the laws. At present their reliance is upon the contention that the plaintiff in error can have no relief merely because it has not proved to a demonstration that similar injustice has been done to others as well as to itself, but has relied upon the unavoidable effect of the statute, as stated by the Court of Appeals and as illustrated in this case, as establishing that it has been deprived of the equal protection of the laws.

> Counsel seems to intimate also that the question here involved was not properly raised below. But it is clear that there is nothing in this suggestion. The petition for the writ of *certiorari* (Record, p. 7) refers to the Fourteenth Amendment, and after stating the facts in the case alleges that the action taken in making the assessment, "construes "the statute as imposing upon one class of persons, namely, "corporations, taxation at a greater rate than upon another "class of persons by reason of the ownership of property "identically similar in character. Obviously such a con- "struction renders the statute unconstitutional." This clearly raised the question at the earliest stage of the proceeding.

This contention of the Synopsis clearly misapprehends the character of the present proceeding. It has, of course, been held that where an injunction is sought in advance it should be shown that the injustice of which complaint is made arises from an erroneous general rule of taxation. This is because there is ordinarily an adequate remedy at law, which will secure redress in each separate instance and equity will not entertain jurisdiction merely because the tax is illegal, but there must be some element of equitable jurisdiction, such as prevention of a multiplicity of suits.

But the present case is a direct proceeding to set aside the assessment which has been made against the plaintiff in error under

the general rules upon the subject. Its ground is that the plaintiff in error, by reason of owning this single parcel of real estate, is subject to a more onerous assessment because it is an artificial person than it would be if it had been a natural person, and thus is deprived of the equal protection of the laws. How can it be important to show that others also are subjected to similar injustice? They are not before the court; their wrongs could not be remedied in this proceeding, and the facts regarding them would not affect in any degree the facts regarding the relator. The inequality of protection follows as an inevitable consequence from the fact that assessments are made against natural persons under one statute and against corporations, not only under that statute, but also under another in addition. The entire assessment now involved is the effect of a statute (Laws of 1857, Ch. 456) which has application to corporations alone.

The real estate of both natural and artificial persons is assessed under the general provision that it shall be assessed where it is situated at its full and true value (1 R. S., Sec. 1, 9th ed., p. 1680; *Id.*, Sec. 17, 9th ed., p. 1685). A corporation is then subject to a further assessment upon its capital stock which is defined as meaning merely its total gross assets exclusive of franchises (People *ex rel.* Union Trust Co. vs. Coleman, 126 N. Y., 433). From this total amount of the gross assets is deducted *not* the *actual* value of the real estate, but its *assessed* value, and upon the balance remaining the corporation is assessed at its actual value (Laws of 1857, Chap. 456, Sec. 3) as "taxable personal property" (Record, p. 28). As already said (Brief in Reply, p. 2), the purpose of the statute is indicated by the provision that the capital stock (or gross assets, 126 N. Y., 433), consisting in part of the real estate, shall be assessed at its *actual* value while the real estate shall be deducted only at its *assessed* value. This method recognizes that the two will in fact differ, and is adopted for the purpose of assessing in case of a corporation any margin of difference which may exist between the actual and assessed value of the real estate which margin would not be subject to assessment if the owner were an individual. It is entirely obvious that this is a method of assessment which must lead to a greater rate of taxation than that which would otherwise prevail—if there were not this second assessment upon the real estate as part of its gross assets, a corporation would be subject to taxation only upon the value thereof fixed in assessing the real estate of the county generally.

It was suggested at the argument that this rule could not apply to an individual because an individual has no capital stock. This is based upon a misapprehension of the meaning of "capital stock" in this statute. As already pointed out it means nothing save the property of a corporation (Brief for plaintiff in error, p. 5); the franchises which constitute the difference between an artificial and a natural person are not an element in the assessment. The assessment is arrived at from a statement of its total assets which the corporation is required to furnish and which in the present case will be found in the record (pp. 9, 21). An individual might equally be required to furnish a statement of his total assets, and it might be provided that the assessed value of his real estate should be deducted and he should be taxed on the balance as personal property. This would be the identical course which is now pursued in the case of corporations, but from which individuals are free.

The statute is intended to cover the case of the real estate of a corporation being assessed below its actual value. Its purpose is to compel a corporation to pay taxes upon any such margin of difference while an individual owning the same real estate will be under no such obligation. As already said when the Court of Appeals came to discuss this precise aspect of the statute (People *ex rel.* Equitable Gas Co. vs. Barker, 144 N. Y., 94), it stated not only that the statute was passed to meet the generally known fact that the officials assessed real estate at less than its actual value, but that the effect of the statute would be that an individual so assessed would not be taxable further while a corporation would be taxed upon this margin of difference. As the language of the court covers the point fully it seeme not improper to again repeat it. The court said, "*but it is well known* that this "duty cast upon assessors is seldom performed, and *that the taxation* "*of real estate throughout the state is generally upon an assessment* "*which represents but part of its actual value. Assessment at the* "*full value is the exception and not the rule.* * * * Real and "personal property are to be separately assessed. *In case of an* "*individual assessed for both, if the realty be undervalued, the loss* "*cannot be made up by adding it to the assessment of the personalty.* "* * * * *In case of corporations it may happen that an under-* "*valuation in the assessment of the real estate as such will be* "*corrected in its valuation as part of the capital, and so the under-* "*valuation may be remedied, and the whole property be subjected to* "*taxation at its real value*" (pp. 99, 100).

It is a glaring error to allege that these rulings were largely *obiter* and a "mere observation" (Synopsis, p. 6) on the part of the Court of Appeals. The facts in the Equitable Gas Co. case show that it was decided upon these precise grounds, and that if the court had not taken judicial notice of the difference usually prevailing between assessed and actual values of real estate, there would have been no foundation for the decision. In the course of the general assessment of the real estate of the county, the Commissioners had assessed the relator's real estate. When they came to assess its gross assets (capital stock) they charged it with the real estate at a considerably greater sum than its assessed value. When the relator made its "statement of its gross assets for purposes of assessment," it stated the real estate at its assessed value on the same ground with that stated in the Synopsis for defendants in error (p. 4)—that "the assessed value of real estate is in theory its actual value." The question, therefore, was whether the assessed value was conclusive as expressing the actual value, or whether it was competent for the Commissioners to assess the relator upon a greater sum as the actual value of the real estate—that is to say, the question was whether the assessed value and actual value were the same, as the statute required, or the assessed value was less than the actual value. Upon this subject there was no proof showing that the statute had not been followed, and that the assessed value was less than the actual value. As in the present case, the assessment upon capital stock depended wholly upon the existence of a difference between the two; unless there was such a difference, the assessment could not stand. Unless the court took judicial notice of the fact that assessed and actual values ordinarily differed, it would be compelled to vacate the assessment.

The court thereupon said that the theory of the statute is that real estate, for the purpose of taxation, shall be assessed at its full value, but that "it is well known that (the duty of "assessing at full value) cast upon assessors is seldom performed, "and that taxation of real estate throughout the state is generally "upon an assessment which represents a part of its actual value. "Assessment at full value is the exception and not the rule." And having taken judicial notice of this state of facts, it proceeded to uphold the assessment upon the ground that, although the statute requires that the two should coincide in point of fact, the assessed value and the actual value of real estate in general do not coincide and that it was competent for the Commissioners to assess upon

the basis of the actual value notwithstanding that it exceeded the assessed value. It is perfectly clear, therefore, that the court took judicial notice of the general practice of assessing real estate below its value, and that its action in so doing was not *obiter* but was necessary to the decision.

In any case, there can be no question that, when a court acting judicially states that facts not appearing in the record, but which it deems necessary to state as grounds of the decision are "well known," it takes judicial notice of their existence. The ordinary expression is that the court will take notice of matters of "common "knowledge" (King vs. Gallun, 109 U. S., 99, 101). "Courts will "take notice of whatever is generally known within the limits of "their jurisdiction; and if the judge's memory is at fault, he may "refresh it by resorting to any means for that purpose which he "may deem safe and proper" (Brown vs. Piper, 91 U. S., 37, 42). In the instance under discussion this statement by the Court of Appeals that it had judicial knowledge of the facts is peculiarly proper and peculiarly well founded, because the facts annually appear in the official publications of the executive branch of the government. The annual reports to the legislature of the State Board of Tax Commissioners of the State of New York contain tables showing the percentage of assessed value of real estate through the state to the actual value thereof. The years involved in the present case are 1896 and 1897. These tables show that for the year 1896 the average percentage of assessed value to the actual value was slightly under sixty-six per cent. throughout the State and in New York County was sixty-three per cent., and for the year 1897 was slightly under seventy per cent. throughout the State and in New York County was sixty-three per cent. As the Court of Appeals has held the practice to be a matter of judicial notice, a complete copy of the schedule taken from the report of the State Tax Commissioners for the year 1896 is attached to this brief, showing the extent of the practice in question, and how entirely the Court of Appeals was warranted in judicially knowing of its existence.

The view that the Court of Appeals in the Equitable Gas Co. case took judicial notice of the facts is supported also by the opinion of Mr. Justice BEEKMAN in People *ex rel.* Sutphen vs. Feitner, 27 Misc., 384, 387, a case argued by the present counsel for the defendants in error. Mr. Justice BEEKMAN said "that while it is true that the law requires "property to be assessed for purposes of taxation at its "actual value, it *is a matter of common knowledge* that such

" has not been the practice, the assessment usually falling " much below that standard. Indeed, *judicial notice* of the " fact was taken in the case of the People *ex rel.* Equitable " Gas Co. vs. Barker, 144 N. Y., 94, where it was said that " (p. 99), ' it is well known that this duty cast upon assessors " ' is seldom performed and that the taxation of real estate " ' throughout the state is generally upon an assessment " ' which represents but part of its actual value. Assessment " ' at the full value is the exception and not the rule.' "

It has been already pointed out (Brief in Reply, p. 4), that in the case of Cummings vs. National Bank, 101 U. S., 153, 162, quite irrespective of the proof regarding the state of facts in Ohio where the case arose, this court took judicial notice of the fact, that throughout the country real estate is assessed at less than its actual value saying that, " it is a matter of common observation that in the valuation " of real estate this rule (of assessment at full value) is habit- " ually disregarded."

So, too, in the case of Dundee Mortgage Co. vs. Parrish, 24 Fed. Rep., 197, 202, the court said, " indeed, the practice " is so universally well known that the court may take " judicial notice of it and safely assume that there is not an " acre of land in Oregon that is valued for taxation at more " than half its true cash value and that generally it is not " valued at more than one-third of such value."

In Railroad and Telephone Cos. vs. Board, 85 Fed. Rep., 302, it was held, as stated in the syllabus, that " a court may " take judicial notice of an established custom of the assess- " ors of the state to assess property for taxation at less " than its actual value."

The authorities, therefore, support the Court of Appeals in taking judicial notice of this fact and the reports published by the State Tax Commissioners, who are especially charged with the duty of ascertaining the facts, show its extent. It seems idle for counsel to contend that under these circumstances the court must shut its eyes to the truth.

The facts in the present case show that what the Court of Appeals says " may happen " under this statute has in fact happened. The real estate of the relator was assessed by these Commissioners under the general assessment applying to both corporations and natural persons at $600,000. Then as a part of the gross asets or capital stock of the relator it was assessed by the same Commissioners at $965,000 (pp. 19, 20). From this an assessment was figured out at $165,999 as " personal property " (p. 28). An individual owning this parcel of real estate would not have been subject to this further assessment, but only to the assessment of

$600,000. This was the case in the two successive years 1896 and 1897.

The assessment in question, therefore, follows from the administration of the statutes as a consequence, said by the Court of Appeals to be their natural result. It is idle to claim that the plaintiff in error has not fully established that the act of the State in making this assessment deprives it of the equal protection of the laws, or that it is incumbent upon the plaintiff in error to show that similar wrongs have been inflicted upon other persons. The injustice to itself has inevitably followed from an administration of the statutes in the manner which the Court of Appeals says is "well known" to be general. There is nothing in the claim that plaintiff in error should prove that an indefinite number of others have been wronged, as a condition of redress for the indisputable wrong to itself. It would amount to a denial of justice to hold a party aggrieved to the necessity of such an indefinite, irrelevant and expensive inquiry.

In their first brief (p. 19) counsel made a separate point of the proposition that "a failure to comply with its provisions cannot "render a statute unconstitutional." Perceiving that this proposition had no bearing upon the case, in their Synopsis counsel concede (p. 7) that if the plaintiff in error has been deprived of the equal protection of the laws "it would make no difference whether "that result followed from the statute or from the action of the tax "officials in administering the statute." They then proceed to laboriously distinguish between the facts of the present case and of certain cases cited in the Brief in Reply for the plaintiff in error (p. 5). These distinctions are of no present importance. The cases are not cited as parallel with the facts of the case at bar, but as establishing under a great variety of circumstances the general principle which the defendants in error have thus just admitted, and which is expressed in one of the cases in these words: "these pro- "hibitions [of the fourteenth amendment] extend to all acts of the "State, whether through its legislative, its executive, or its judicial "authority" (Scott vs. McNeal, 154 U. S., 34, 45). The contention that if all the provisions of law were complied with no injustice would result, is without weight. As was said in Yick Wo vs. Hopkins, 118 U. S., 359, in the extract cited in the Synopsis of defendants in error (p. 10), "though the law itself be fair on its face "and impartial in appearance, yet if it is applied and administered

"by public authority with an evil eye and an unequal hand, so as "practically to make unjust and illegal discriminations as between "persons in similar circumstances material to their rights, the de- "nial of equal justice is still within the prohibition of the constitu- "tion." To the same effect is National Bank vs. Kimball, 103 U. S., 732, 735.

The contention of the Synopsis, therefore, comes down to a claim that one who is deprived of equal protection of the laws cannot have relief unless he shows not merely by the natural result of the course which has been pursued in his own case and also by facts of which the court takes judicial notice, but also by affirmative proof, that an indefinite number of others have suffered like injustice. This is manifestly absurd.

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PERCENTAGE TABLES,

taken from the official report of the State Board of Tax Commissioners of New York for the year 1896, showing the Average Percentage of Assessment for the entire State for the Year 1896.

Counties.	Percentage Table, 1896.	Assessed Value of Real Estate, 1895.	100 Per Cent. of Full Value of Real Estate.
Albany	.75	$89,006,610	$118,675,480
Allegany	.70	12,910,181	18,443,115
Broome	.73	30,210,906	41,364,802
Cattaraugus	.70	17,101,504	24,430,720
Cayuga	.69	27,493,789	39,486,071
Chautauqua	.68	26,235,139	38,581,086
Chemung	.68	21,881,436	32,178,582
Chenango	.73	14,875,107	20,376,858
Clinton	.66	5,935,241	8,992,789
Columbia	.67	21,370,352	31,896,047
Cortland	.55	7,857,529	14,286,416
Delaware	.60	12,018,039	20,030,065
Duchess	.71	42,025,788	59,191,250
Erie	.70	261,760,957	373,944,224
Essex	.78	9,701,973	12,438,426
Eranklin	.70	8,240,208	11,771,725
Fulton	.60	9,659,401	16,099,001
Genesee	.60	17,219,281	28,698,801
Greene	.72	12,043,471	16,727,043
Hamilton	.92	1,890,808	2,055,226
Herkimer	.58	15,860,774	27,346,162
Jefferson	.80	31,099,110	38,873,887
Kings	.68	542,700,471	798,088,927
Lewis	.60	6,558,702	10,931,170
Livingston	.70	22,953,945	32,791,350
Madison	.67	17,952,873	26,795,332
Monroe	.70	134,772,663	192,532,375
Montgomery	.70	23,190,442	33,129,202
New York	.63	1,646,028,655	2,612,743,896
Niagara	.75	33,947,687	45,263,582
Oneida	.60	43,019,488	71,699,146
Onondaga	.85	96,158,330	113,127,447
Ontario	.78	28,858,675	36,998,301
Orange	.62	33,764.310	54,458,403

Counties.	Percentage Table, 1896.	Assessed Value of Real Estate, 1895.	100 Per Cent. or Full Value of Real Estate.
Orleans	.78	15,555,225	19,942,596
Oswego	.71	24,023,123	33,835,384
Otsego	.59	16,534,225	28,024,110
Putnam	.72	6,363,211	8,837,793
Queens	.50	55,142,575	110,285,150
Rensselaer	.80	71,612,170	89,515,212
Richmond	.50	20,271,267	40,542,534
Rockland	.58	11,335,161	19,543,381
Saratoga	.60	19,576,903	32,628,171
Schenectady	.69	14,548,687	21,085,053
Schoharie	.80	11,173,435	13,966,668
Schuyler	.65	5,931,151	9,124,847
Seneca	.79	15,136,674	19,160,346
St. Lawrence	.84	33,031,000	39,322,619
Steuben	.80	29,599,834	36,999,792
Suffolk	.62	18,989,444	30,628,135
Sullivan	.70	5,446,341	7,780,487
Tioga	.75	12,529,233	16,705,644
Tompkins	.55	9,971,138	18,129,341
Ulster	.71	24,946,572	35,136,016
Warren	.80	7,020,837	8,776,146
Washington	.75	17,437,466	23,249,954
Wayne	.71	23,195,518	32,669,743
Westchester	.51	90,498,948	177,448,917
Wyoming	.65	12,859,469	19,783,798
Yates	.65	9,819,925	15,107,576
		$3,908,853,377	$5,933,056,320

5,933,056,320) 3,908,853,377

.658826272 Average per cent for entire estate.

The similar table for the year 1897, contained in the Tax Commissioners' report for that year, shows that the average percentage of assessment for the entire State was 69.75, and the percentage in New York County was 63.

No. 51.

FILED
OCT 12 1900
JAMES H. McKENNEY,
Clerk.

Brief of Connoly for D. C.

Supreme Court of the United States,

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

Filed Oct. 12, 1900.

OCTOBER TERM, 1900—No. 51.

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF THE NEW YORK CLEARING HOUSE BUILDING COMPANY,
Plaintiff-in-Error,

against

EDWARD P. BARKER, THEODORE SUTRO AND JAMES L. WELLS, COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

TAXES OF 1896.

BRIEF FOR DEFENDANTS-IN-ERROR.

THEODORE CONNOLY,
JAMES M. WARD,
Counsel for Defendants-in-Error.

JOHN WHALEN,
Corporation Counsel,
Attorney for Defendants-in-Error.

(8961) MARTIN B. BROWN CO., Printers and Stationers, 49 to 57 Park Place, New York.

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of THE NEW YORK CLEARING HOUSE BUILDING COMPANY, Plaintiff-in-Error,

against

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

No. 51, October Term, 1900. (Taxes of 1896.)

Brief for Defendants-in-Error.

Upon July 16, 1896, a writ of certiorari was duly sued out in the New York Supreme Court, pursuant to the Laws of New York of 1880, chapter 269, and the Consolidation Act (Laws of 1882, chap. 410, sec. 821), by the New York Clearing House Building Company to review the action of the Commissioners of Taxes and Assessments of the City and County of New York in assessing the relator upon its capital and surplus (p. 28) for the year 1896 at the sum of $165,999. At the Special Term the writ was dismissed (p. 29; 23 Misc.,

192). The opinion of the Court is at pages 30–33. The relator appealed (pp. 29, 30) to the Appellate Division of the Supreme Court, which affirmed the judgment of the Special Term without opinion (p. 33; 31 App. Div., 315). The relator then appealed to the Court of Appeals (p. 34), which again affirmed the judgment without opinion (p. 2; 158 N. Y., 709). The relator thereupon sued out this writ of error (pp. 35–37).

Statement.

This proceeding was brought under the provisions of chapter 908 of the Laws of 1896 to review an assessment against the capital and surplus of the relator for purposes of taxation for the year 1896, fixed by the respondents at $165,999.

The Deputy Tax Commissioner assigned to that duty assessed the personal property of the appellant for purposes of taxation for the year in question at $900,000 (p. 28). The relator, claiming to be aggrieved by that assessment, filed with the respondents on January 17, 1896, a statement purporting to disclose its condition for the purposes of assessment on the second Monday of January, 1896, in which it stated its total gross assets at $1,094,944, the capital stock actually paid in or secured to be paid in at $900,000, its total indebtedness at $329,050 and the assessed value of its real estate at $350,000 (p. 21).

If the respondents had acted finally upon that exhibition of its assets, or had rested upon their strict legal right to refuse to receive or file or act upon any subsequent application, relator would have been properly assessable at $415,895.

Under date of March 7, 1896, a second application was submitted by the relator and received by the respondents, in which the following statements appeared (pp. 22, 23).

Total gross assets:	
Real estate	$600,000 00
Personal	130,049 02
	$730,049 02
Capital stock actually paid in, or secured to be paid in	900,000 00
Amount of surplus earnings	None.
Rate of dividend for last year, or last annual dividend	None.

Indebtedness in detail, as follows:

Moneys borrowed	$230,000 00
Money owing on building contract	99,050 28

Q. Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable properties or securities, or for the purpose of evading taxation?

A. No.

Assessed value of real estate, $600,000.

Describing particularly by Ward and Ward map numbers.

Ward 1, Map No. 1208, Cedar street.

NOTE 1.—*The lots and building cost the Company about* $965,000, *but the building was constructed especially for the business of the New York Clearing House Association and is not adapted for any other use, so that its market value is not equal to its cost. Furniture, etc., cost* $25,069.14; *cash in bank,* $104,979.88.

Amounts invested in the stocks of other Corporations which are taxed upon their capital	None.
Amount invested in United States securities	None.

(If the stock of the Company is worth less than par state the actual value, and give the facts under oath which will justify such estimate of its value.) The stock on January 13, 1896, was worth less than par, for the reason that the Company owned no property of any kind except its real estate as above, which is assessed for $600,000, and personal property of a value not exceeding $130,049.02, and the Company owed $329,050.28. The stock is worth less than the cost of the Company's real estate.

The principal office or place of transacting the financial business of the said Corporation is situated in the First Ward of the City of New York, at No. 77 Cedar street.

City of New York, *ss.:*

I, George G. Williams, the President of the said Corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

G. G. WILLIAMS,
President.

Sworn to before me this 7th day of March, 1896.

EDWARD P. BROWN,
Notary Public,
Kings County.

Certificate filed in New York County.

[NOTARIAL SEAL.]

The Commissioners did not accept as true the allegation contained in the statement of March 7 that the market value of the relator's real estate was "not equal to its cost," which had been stated at "about $965,000," but determined that the actual value of such real estate was $965,000 (pp. 19, 20). Adding to this

amount the value of the personalty ($130,049), the Commissioners found the total gross assets of the relator to be $1,095,049, the sum originally stated by the relator, and determined the actual value of the relator's capital liable to assessment as follows:

Total gross assets.		$1,095,049
Deductions:		
Debts....	$329,050	
Assessed value of real estate ..	600,000	
		929,050
Leaving a taxable balance of.... ..		$165,999

at which amount the assessment was finally fixed (p. 20).

Although the petition alleges an erroneous notice of the amount at which the assessment had been fixed as a cause of grievance (p. 6), that specification was orally withdrawn at Special Term, and was not urged on the hearing below.

In its petition for a writ of certiorari herein the relator claimed that it had no personal property or capital stock subject to assessment (p. 7), and that the decision of the respondents was therefore illegal (p. 7). The basis of this claim was that the total gross assets should be taken at $730,049, and not at $1,095,049, the difference being due to the different valuations of *real estate* adopted by the respective parties. Taking the gross assets at $730,049, there would remain no basis for assessment of capital after making the proper deductions (p. 6).

[It may be noted, in passing, that the claimed deduction of $90,000 as ten per cent. of relator's capital was improper, because the relator had no *surplus* after deducting its debts of $329,050.]

In addition to the claim of *overvaluation* of its assets, as regards its real estate, the relator makes the further claim of *illegality*. It contends that the construction of chapter 456, Laws of 1857 (under which the assessment was made) adopted by the respondents "renders the statute unconstitutional" (p. 7). This claim will be considered later.

The Court at Special Term dismissed the relator's writ on the merits (p. 29). In the opinion rendered Mr. Justice Beekman sustained the decision of the respondents as to the value of the real estate (pp. 30-33), and the order of the Special Term was unanimously affirmed by the Appellate Division (p. 33) without opinion (p. 34), on the opinion in the Court below (31 App. Div., 316), and so by the Court of Appeals (158 N. Y., p. 709).

The question of fact relating simply to the *value* of relator's *capital and surplus* has been determined in favor of the Commissioners of Taxes.

The only question, then, that remains for discussion on this appeal is the claim of illegality, and *that* claim is based on the contention that the *method* by which the Commissioners of Taxes determined the *actual value* of *the capital and surplus* of the plaintiff in error, under the provisions of chapter 456 of the Laws of 1857, if the construction of that act warrants such a *procedure*, renders that law unconstitutional.

POINTS.

I.

Upon the facts found, the assessment of the relator's capital was in strict conformity with the law.

The respondents were governed in their action by the provisions of chapter 456, Laws of 1857, section 3:

> "Sec. 3. The *capital stock of every company liable to taxation*, except such part of it as shall have been excepted in the assessment-roll, or as shall have been exempted by law, together with its surplus profits or reserved funds, exceeding 10 per cent. of its capital, *after deducting the assessed value of its real estate*, and all shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this state, *shall be assessed at its actual value*, and taxed in the same manner as the other personal and real estate of the county."

Upon the facts in the present record the italicised portions of the section are the only ones to be regarded, the other provisions having no application. The assessed value of the relator's real estate was $600,000. The "actual value" of its "capital stock" was the only other element required.

Whatever uncertainty may have existed as to the meaning of the words "capital stock," as used above, was dispelled by the opinion of the Court in *People* ex rel. *Union Trust Co.* vs. *Coleman*, 126 N. Y., 433, which has been the guide of assessing officers since 1891. In that case the words "capital stock" were said to relate to the capital of the company, and not the shares of the stockholders; and "capital" was defined to mean *property*

(not including *franchises*), whether real or personal, or both—in other words, the company's tangible assets or good credits.

In framing the proper rules of assessment of corporate capital the Court said that the capital "must be assessed at its own value, and when that is correctly known and ascertained no other value can be substituted for it."

In the present case the respondents followed the rule. They had ascertained the value of the relator's property to be the sum of $1,095,049, subject to debts amounting to $329,050, leaving a balance of $765,999 as the *actual value* of the relator's "capital." The deduction of the *assessed value* of relator's *real* estate ($600,000) left for assessment as capital the sum of $165,999, which was the amount fixed by the respondents.

II.

The fact that in determining the actual value of the relator's capital stock the real estate was taken at its actual value and that only the ASSESSED value of such real estate was deducted did not render the assessment illegal.

> "It is the general purpose of the statutes in relation to assessments and taxation to secure an assessment upon all property, real and personal, at its actual value, and they must be construed and enforced with this purpose constantly in view."
>
> *People* ex rel. *Twenty-third St. Ry. Co.* vs. *Commrs.*, 95 N. Y., 556.

In the light of the decision of the Court in *People* ex rel. *The Equitable Gas-light Company* vs. *Barker*, 144

N. Y., 94, the question as to the legality of the relator's assessment cannot be regarded as an open one. If the rule contended for by the present appellant had been applied in that case, the assessment of capital stock would have been canceled. In the *Equitable* case the statement furnished to the Commissioners disclosed following condition (p. 98):

Total gross assets..... ...		$2,556,883 43
Comprising:		
Real estate (as *assessed*).	$1,515,400 00	
Personal property.....	1,041,483 43	
		$2,556,883 43

In the personal property was included an item of patent rights and franchises valued at $500,000, and the debts of the company amounted to $2,839,192.98. Thus the debts apparently exceeded the entire assets of the company, leaving nothing for assessment as capital stock. The Commissioners, however, did not accept as binding the valuation of the real estate made by their deputy, but found that the actual value of such real estate was so great that, when added to the personal property, the total valuation over and above the debts left the capital ($4,000,000) unimpaired. They accordingly deducted from the par value of the capital the *assessed* value of the real estate and the value of the patent rights and franchises, and assessed the balance ($1,972,700) as capital stock. This result was approved by the Court.

It may be noted that the decision in the *Equitable* case was made in December, 1894, before the new Constitution became operative. The Court, therefore, examined the record to ascertain whether the valuation of the property was justified. In the present case the question of fact as to valuation, having been determined below, is not before the Court for review.

The unanimous opinion of the Court in the case last cited was relied on by Mr. Justice Beekman as the basis of his decision at the Special Term herein (pp. 30–33).

Counsel for the appellant have argued in the courts below that the conclusion reached by this Court in the *Equitable Gas-light* case is not consistent with the provisions of the statutes relating to taxation. They have adopted, in preference, the opinion of Mason, *J.*, in *People* ex rel. *The Citizens' Gas-light Company of Brooklyn* vs. *The Board of Assessors*, 39 N. Y., 81, wherein the several laws (including chapter 456, Laws of 1857) are considered. But the decision was not concurred in by Judges Grover, Clerke and Miller, and was unanimously repudiated by the Court in the case of the *Twenty-third Street Railroad Company*, 95 N. Y., 562:

> "All that was said there was not necessary to "the decision of that case, and we think the con- "struction we have given to the statutes is more "likely to give just results and to effectuate the in- "tention of the law makers."

The opinion in the last-cited case was criticised in *People* ex rel. *Union Trust Co.* vs. *Coleman*, 126 N. Y., 445, but not as to the point naw considered—the right to deduct the *assessed* value of real estate from the *actual* value of the capital and surplus.

III.

The construction of the statute sanctioned by the Courts of the State of New York in sustaining the assessment against the "capital and surplus" of the relator does not render the statute under which such assessment was made unconstitutional.

The petition sets forth the constitutional objection relied on by the plaintiff in error in the following words (p. 7, fol. 8):

> "The Fourteenth Amendment to the Constitution of the United States provides (sec. 1) that "no state 'shall deny to any person within its jurisdiction the equal protection of the laws.' Corporations are persons within the meaning of this "provision. The Commissioners of Taxes and "Assessments have adopted an erroneous construction of the statute in question, in "that they have construed it as subjecting "the petitioner, because it owns real estate, "to taxation not only upon the *assessed* "value of the real estate, but also upon its *actual* "*cost, although the assessed value* is the *same as the* "*actual value and much less than the actual cost.* "This construes the statute as imposing on one "class of persons—namely, corporations—taxation "at a greater rate than upon another class of "persons by reason of ownership of property "identically similar in character. Obviously "such a construction renders the statute unconstitutional."

When the assessment involved in the proceeding at bar was made, section 3 of chapter 456 of the Laws of 1857 was the law in force. This particular pro-

vision of the statute was repealed and continued by section 12 of the revision of the laws relating to taxation in the State of New York, known as the Tax Law, in chapter 908 of the Laws of 1896. As the assessment relating to the taxes of 1897 are now before the Court, and as the assessment relating to that year was made under the Tax Law, and as the effect of certain words in the Statute of 1857 and omitted in the Tax Law may be material, we print the two provisions in parallel columns.

Laws of 1857, chapter 456, section 3 :

"Sec 3. The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll, or shall have been exempted by law, together with its surplus profits or reserved funds, exceeding ten per cent. of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value, *and taxed in the same manner as the other personal and real estate of the county.*"

Assessment of* 1896 *made under this provision.

Section 12, chapter 908, Laws of 1896 (Tax Law).

"Sec. 12. *Taxation of Corporate Stock*—The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll, or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value."

(Revisers' Note—L. 1857, chap. 456, sec. 3 ; R. S., 8th ed. 1086, without change).

Assessment of* 1897 *made under this provision.

It will be observed that section 12 of the Tax Law of 1896 re-enacted section 3 of the Act of 1857 (chapter 456) without any change of language except the omission of the portion thereof above italicized including the closing words:

> "and taxed in the same manner as the other "personal and real estate of the county."

It seems idle, in tracing the history of the provisions of the statute relating to the assessment and taxation of corporations, with a view to determining what was the force to be given to the words contained in the Act of 1857, omitted in section 12 of the Tax Law to go back of the amendment or revision of section 10 of title 4 of chapter 13 of part 1 of the Revised Statutes as amended by chapter 564 of the Laws of 1853.

The closing words of section 3 of the Act of 1857, omitted from section 12 of the Tax Law, as above stated, were left over in such section 3 as a meaningless survival from said section 10 as amended by the Act of 1853, which, as so amended, read as follows:

> "Sec. 10. The capital stock of every company liable to taxation, except such part of it as shall have been exempted in the assessments under the previous sections of this title, together with its surplus profits or reserved funds exceeding ten per cent. of its capital, after deducting the assessed value of its real estate, and also the real estate of every such company, shall be assessed and *taxed in the same manner as the other personal and real estate of the county*, unless such company shall be entitled to commute, as by the provisions of the preceding section, and shall elect so to do."

It will be noticed that the gist of section 3 of the Act of 1857 was to require capital stock and surplus profits to "be *assessed* at its actual value" instead of requir-

ing the same to "be *assessed* and taxed in the same manner as the other personal and real estate of the county," as was provided by section 10 as amended by the Act of 1853. The words "and *taxed* in the same manner as the other personal and real estate of the county" thus taken over from such section 10 into section 3 of the Act of 1857 were mere surplusage; their entire force in section 10, so far as they had significance in that section being entirely destroyed, and being intended to be destroyed, as the principal change made and intended to be made in the substance of the law by the Act of 1857. It should be noticed also that, in such section 10, the language was that the capital stock and surplus profits "shall be *assessed* and taxed in the same manner as the other personal and real estate of the county," the word "*assessed*" being the significant word of this clause of section 10, and that the word *assessed* was dropped out when this clause was taken over from section 10 into section 3 of the Act of 1867; and that an entirely different mode of *assessment* was provided by said section 3. It would follow of necessity that the property so *assessed* under said section 3 would inevitably be *taxed* in the same manner as the other personal and real estate of the county by virtue of the other provisions of the statutes requiring the proper officials to extend the tax uniformly upon all assessed valuations.

Such has been judicially declared to be the meaning, *or rather the entire absence of meaning*, in these closing words of section 3 omitted from the present section 12 of the Tax Law. The General Term Supreme Court, in People *ex rel.* Broadway, etc., R. R. Co., *vs.* Tax Commissioners of New York City, I., T. and C., 635, at p. 638, per Ingraham, said, referring to these closing words of section 3 of the Act of 1857:

> "It was said on the argument that the statute re-
> "quired the *assessment* to be made in the same

"manner as other personal and real estate of the "county. These words did not apply to the *assess-* "*ment* but the *taxation*, so as to call for the same "rate on the valuation as is applied to personal and "real estate."

And the Court might well have added that these words were mere surplusage, and if stricken out from section 3 of the Act of 1857 precisely the same result would remain by reason of the other statutes requiring the Supervisors to extend the tax by a uniform rate on all assessed valuations.

It is evident, therefore, that the Commissioners of Statutory Revision knew what they were doing when they added, after section 12 of the proposed Tax Law, as reported by them to the Legislature, the following note:

"L. of 1857, ch. 456, sec. 3; R. S., 8th ed., 1086, "without change" (Report of the Commissioners "of Statutory Revision, 1896, p. 25).

It is clear, then, that the grievance set up in the petition following the claim of unconstitutionality, as follows:

"Moreover, it is inconsistent" (that is, the construc- "tion of the statute complained of) "with the pro- "visions of the Revised Statutes that 'the real estate "'of all incorporated companies, and liable to tax- "'ation, shall be assessed in the town or ward in "'which the same shall lie *in the same manner* as "'the real estate of individuals' (1 R. S., 389, sec. "6). It is inconsistent, too, with the provisions of "chapter 456 of the Laws of 1857 that the capital "stock of every company liable to taxation shall be "taxed *in the same manner* as the other real and "personal estate of the county."

have no force since there is no pretense or claim or allegation that the property of this corporation has not been

taxed the same rate as all the other property in the county.

It is obvious that the objection is founded on a mistake of fact. In the case of corporations, as in the case of individuals, the law requires an assessment of real estate at its actual *value*, not at its actual *cost*. In the present case the record shows that the *cost* and *value* of the property were the same. Whatever force there may have been in the objection when originally made has been nullified by the finding of the Courts below.

If any criticism were to be made of chapter 456, Laws of 1857, section 3, providing for the assessment and taxation of corporate capital, it would probably be that it *unduly favored* corporations as against individuals; for it exempts from all taxation surplus profits or reserve funds equal to ten per cent. of the capital. Would not the successful merchant welcome such a provision for his benefit?

But we think the radical error pervading the appellant's argument is the assumption that corporations and individuals must be treated in all respects alike in the matter of taxation. The Constitution of the State imposes no such restriction on the Legislature. It would be competent for that body to tax corporations on their real estate and relieve individuals. The only requirement is that corporations of like character shall be similarly treated under similar conditions.

> "When legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws IF ALL PERSONS BROUGHT UNDER ITS INFLUENCE ARE TREATED ALIKE UNDER THE SAME CONDITIONS."
>
> Missouri Pacific Ry. Co. *vs.* Mackey, 127 U. S., 205, 209.

A proper enforcement of the provisions of the Act of 1857, under which the respondents proceeded, could never result in an illegal assessment.

And, of course, no statute can be rendered unconstitutional by a failure to comply with its provisions.

It is admitted that classification for purposes of taxation, distinguishing simply between different kinds of property, is entirely within constitutional provisions. It is equally clear, we think, that it was never the purpose or intent of the system in the State of New York to assess for purposes of taxation individuals and corporations in the same way. This arises from the fact that corporations are assessable upon their *capital and surplus*, whereas individuals are assessable not upon their property as a *whole*, but upon their property as divided into real and personal. The classification, therefore, relates to different kinds of property. The capital and surplus of the corporation relating to property which includes as a unit for purposes of assessment the actual value of its tangible assets, whether represented by real or personal property. Whereas, in the case of an individual, classification for purposes of assessment of the property owned is distinctly divided into two kinds of property, real and personal, not assessed for purposes of taxation as a unit, as in the case of corporations. Moreover, in the State of New York corporations are allowed by way of arbitrary deduction surplus profits or reserve funds exceeding ten per cent. of its capital.

IV.

There is no iron rule of equal taxation.

This court said in a well known case:

"The provision in the Fourteenth Amendment, "that no State shall deny to any person within its "jurisdiction equal protection of the laws, was not "intended to prevent a State from adjusting its "system of taxation in all proper and reasonable "ways. It may, if it chooses, exempt certain classes "of property from any taxation at all, such as "churches, libraries and the property of charitable "institutions. It may impose different specific taxes "upon different trades and professions and may vary "the rates of excise upon various products; it may "tax real estate and personal property in a different "manner; it may tax visible property only, and not "tax securities for payment of money; it may allow "deductions for indebtedness, or not allow them. "All such regulations, and those of like character, "so long as they proceed within reasonable "limits, and general usage, are within the dis- "cretion of the State Legislature, or the people "of the State in framing their Constitution. But "clear and hostile discriminations against particu- "lar persons and classes, especially such as are "of an unusual character, unknown to the practice "of our Governments, might be obnoxious to the "Constitutional prohibition. It would, however, be "impracticable and unwise to attempt to lay down a "general rule or definition on the subject that would "include all cases. They must be decided as they "arise. We think that we are safe in saying that the "Fourteenth Amendment was not intended to compel "the State to adopt an iron rule of equal taxation. "If that were its proper construction it would not

"only supersede all those Constitutional provisions "and laws of some of the States, whose object is to "secure equality of taxation, and which are usually "accompanied with qualifications deemed material, "but it would render nugatory those discriminations "which the best interests of society require."

Bell's Gap. R. R. Co. *vs.* Pennsylvania, 134 U. S., 232-237.

V.

The Constitution of the State of New York contains no clause prescribing equal taxation.

This being the case the plaintiff in error must show a violation of the Fourteenth Amendment of the Constitution of the United States.

VI.

A failure to comply with its provisions cannot render a statute unconstitutional.

The entire attack of the plaintiff-in-error is not against the statute itself, but against the failure of the Commissioners of Taxes and Assessments of New York City and county to comply with its provisions requiring taxation of the capital stock of the plaintiff-in-error at its actual value and in the same manner as the other personal and real estate of the county.

Cummings *vs.* Nat. Bank, 101 U. S., 153, 161.

VII.

The fact is conclusively established that the plaintiff in error has not been aggrieved by the assessed valuations of its property.

It is established by the record that the actual value of the relator's property, over and above debts, was $765,999. The real estate was assessed at $600,000; the balance of the capital stock at $165,999.

As matter of fact, *the relator has benefited by this method to the extent of the tax on about* $200,000; for if the real estate had been assessed, *as such*, at its actual value, which was found to be $965,000, the assessment-rolls would have stood thus:

Real estate roll	$965,000 00
Personal estate (capital stock)	Nothing

By the method actually adopted, the relator has practically been allowed to apply *all of its debts* ($329,050) against its gross assets (including real estate), whereas the law contemplates that an allowance for debts shall be made only in the assessment of *personal property*.

Even if it were assumed, for argument, that an erroneous method had been adopted, the result reached was much more favorable to the relator than if the method proposed by the relator had been adopted.

As the Court said in the Equitable Gas Light case (144 N. Y., 101): "We are not here concerned with any question of inequality of assessment as between the relator and other taxpayers." No suggestion of inequality appears upon the record. But the fact re-

mains that if the Act of 1857 is always applied as it has been in this case, and assessing officers do their duty also in valuing the property of individuals, all the taxable property in the State will be assessed once, and once only, at its actual value, and the harmony of our system of taxation will be maintained.

Under the law of the State of New York, in the proceeding at bar, before the plaintiff-in-error would be entitled to a correction of the assessment as fixed by the defendants-in-error it would be required to prove affirmatively that it had been aggrieved and that the value of its capital and surplus as fixed was in excess of its *actual value*, irrespective of the method by which that result was reached.

Section 821 of the Consolidation Act, being chapter 410 of the Laws of 1882, the special provision of the statute in force in the assessment under review, and indeed when the assessment for 1897 was made, read as follows:

> "Sec. 821. A certiorari to review or correct, on the merits, any decision or action of the commissioners, under either of the preceding sections, shall be allowed by the Supreme Court or any judge thereof, directed to the said commissioners *on the petition of the party aggrieved*, but *only* on the grounds which must be specified in such petition, that the assessment is illegal, and giving the particulars of the alleged illegality, or is erroneous by reason of over-valuation."

This provision of the Consolidation Act was in entire accord with the provisions of the General Tax Law in that regard, as contained in section 250 of chapter 908 of the Laws of 1896, limiting the right to review assessments for taxation to persons claiming to be aggrieved. The Court of Appeals of the State of New York have

finally settled the proposition, that while the methods by which a result is reached in fixing the value of property for taxation may be erroneous, that if that result is such, that from the assessment as fixed no grievance results, the courts will not interfere with the determination of assessing officers upon questions of value and appraisal.

People *ex rel.* Equitable Gas Light Co. *vs.* Barker, 73 Hun, pp. 23, 24 and 28; affirmed, 137 N. Y. Rep., p. 544.

VIII.

The meaning of "Tax in the same manner" in the statute.

The meaning of these and similar words in statutes simply is that *the form* must be the same in all cases.

Peo. *ex rel.* Thurber-Whyland Company *vs.* Barker, 141 N. Y., 118.

IX.

The Cases Cited by the Plaintiff-in-Error.

Without going into a detailed examination of all the cases cited in the learned brief of plaintiff-in-error, it will be found that they are divided into several general classes, and that they are distinguishable from the case at the bar.

The first class, of which Cummings *vs.* National Bank, 101 U. S. 153, is the type, are cases which construe the statute in relation to national banks, and in which the facts and statutes are very different from those of the present case.

The second class of cases is that of cases brought to obtain an injunction against the action of Tax Commissioner.

Even in this class of cases this Court has lately held that the collection of taxes under the authority of a State will not be enjoined by a Court of the United States on the sole ground that the tax is illegal, but it must appear that the party taxed has no adequate remedy by the ordinary process of law, and that there are special circumstances bringing the case within the same recognized head of equity jurisdiction.

> Arkansas Building Ass'n *vs.* Madden, 175 U. S. 269.

But taking this class of cases we find a fact which distinguishes them absolutely from the case at bar.

In these cases there was present the fact that there was evidence of inequality.

An illustration of the class of injunction cases cited by plaintiff in error is Taylor vs. Louisville & N. R.R. Co., 88 Fed. Rep., 350, which was a case in the Circuit Court of Appeals in the Sixth Circuit. That was an action brought by the railroad company against a board of equalization of the State of Tennessee to enjoin it from certifying, in accordance with a statute of Tennessee, a tax valuation upon complainant's railroad, to be apportioned by the State Comptroller to the thirty-five counties, cities and towns in which the railroad lies.

The holding of the Circuit Court of Appeals is correctly stated in the head-note, as follows:

> " Under the Tennessee Constitution of 1870 (Article 2, sec. 28), declaring that all property shall be " taxed 'according to its value,' to be ascertained as " the Legislature shall direct, 'so that taxes shall be " equal and uniform throughout the State,' when it " is the uniform practice in the various counties of " the State to assess real property at not exceeding " 75 per cent. of its true value, an assessment upon " railroad property at its full value violates the uniformity of taxation which is the main purpose of " the constitutional provision, and will be enjoined, " although this involves a violation of the letter of " the State Statute passed pursuant to the Constitution, which requires all property to be assessed at " its full value.
>
> " Equity will not enjoin an assessment of property " at its full value, on the ground of inequality resulting from the assessment of other property at less " than its full value, unless it appears that the assessing officers, whose acts of undervaluation create the " unjust burden, intentionally and habitually violate " the law by assessing property at less than its true " value."

We have in this case *a constitutional provision* of the State which is violated, and an examination of the opinion of the Court shows that there was a very exhaustive *trial of the question of fact* upon which the Court based its opinion.

The Circuit Court of Appeals said:

> " We find from the evidence, which is uncontradicted, that generally in the State of Tennessee for a number of years the assessors and the " board of equalization of each county have in-

" tended to assess and have assessed real and per-
" sonal property at a uninform percentage less
" than its real value; that this percentage is not
" uniform between the counties, but that it is not
" substantially less than 25 per cent. in any of
" them. We base our conclusion on 150 affidavits
" contained in the record. They do not cover spe-
" cifically more than 35 counties out of the 96 coun-
" ties in the State; but when they are supplemented
" by the evidence of the members of the State
" Board of equalizers * * * we have no diffi-
" culty in finding the fact to be as above stated."

Taylor *vs.* Louisville & N. R. R. Co., 88 Fed. Rep., 362.

It may be said that each case cited by the plaintiff in error where an injunction was granted it was only granted after a careful examination of the facts outside of the allegations of the pleadings.

X.

Conclusion—The judgment should be affirmed.

For the foregoing reasons it is respectfully asked that the judgment herein be affirmed.

THEODORE CONNOLY,
JAMES M. WARD,
Counsel for defendants-in-error

Appendix.

STATUTES OF THE STATE OF NEW YORK.

1. Revised Statutes, 389, section 1, 9th ed., p. 1680:

> "Every person shall be assessed in the town or "ward where he resides when the assessment is "made for all lands then owned by him within "such town or ward, and occupied by him, or "wholly unoccupied."

Id., section 17, 9th ed., p. 1685:

> "All real and personal estate liable to taxation "shall be estimated and assessed by the assessors "at its full and true value, as they would appraise "the same in payment of a just debt due from a "solvent debtor."

Laws of 1857, 456, section 3.

> "The capital stock of every company liable to "taxation, except such part of it as shall have "been exempted in the assessment roll, or as shall "have been exempted by law, together with its "surplus profits or reserved funds, exceeding ten "per cent. of its capital, after deducting the "assessed value of its real estate, and all shares "of stock in other corporations, actually owned "by such company, which are taxable upon their "capital stock under the laws of this State, shall "be assessed at its actual value and taxed in the "same manner as the other personal and real "estate of the county."

Consolidation Act, chapter 410, Laws of 1882, section 814:

> "It shall be the duty of the deputy tax com-"missioners, under the direction of the commis-

" sioners of taxes and assessments, to assess all the
" taxable property in the several districts that may
" be assigned to them for that purpose by said
" commissioners, and they shall furnish to them,
" under oath, a detailed statement of all such
" property showing that said deputies have per-
" sonally examined each and every house, build-
" ing, lot, pier or other assessable property, giving
" the street and ward map number of such real
" estate embraced within said districts, together
" with the name of the owner or occupant, if
" known; also, in their judgment, the sum for
" which such property under ordinary circum-
" stances would sell, with such other information
" in detail, relative to personal property or other-
" wise, as the said commissioners may from time to
" time require. Such deputies shall commence to
" assess real and personal estate on the first Mon-
" day of September in each and every year."

Nos. 51 and 52

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Sup. Ct. Br. of Connoly & Ward for D

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Clerk.

[REG. 50, FOL. 287.]

Filed Oct. 30, 1900.

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

OCTOBER TERM, 1900—NOS. 51, 52.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the NEW YORK CLEARING HOUSE BUILDING COMPANY,
Plaintiff-in-Error,

against

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

Synopsis of Oral Argument.

1. The Grievance Specified in the Petition.

When these proceedings to review the assessments against the capital and surplus of the plaintiff-in-error were brought, the proceedings were regulated by certain statutory provisions contained in section 250, chapter 908 of the Laws of 1896 (the Tax Law of the State of New

York), as those provisions were modified or qualified by section 821 of chapter 410 of the Laws of 1882 (the Consolidation Act of the City of New York).

The provisions of the Consolidation Act in force up to January 1, 1898, were in part as follows:

> "Sec. 821. A certiorari to review or correct on the "*merits* any decision or action of the commissioners "under either of the two preceding sections shall "be allowed by the supreme court or any judge "thereof directed to the said commissioners on the "petition of the party *aggrieved*."

By reference to the printed record herein, page 7, folio 8, it appears that the only grievance attempted to be alleged *against the tax law* of the State of New York, or the *construction of that law* by the Commissioners of Taxes, involved an over-valuation of relator's real estate, and *not* a mere *method of assessment* peculiar to corporations. The particular portion of the record to which we now allude is set forth on page 11, Point III., in the brief for the defendants-in-error. The allegation of the petition is:

> "The commissioners of taxes and assessments "have adopted an erroneous construction of the "statute in question, in that they have construed it as "subjecting the petitioner, because it owns real estate, "to taxation not only upon the *assessed* value of "the real estate, but also upon its *actual cost* although "the *assessed value* is *the same as the actual value* "and *much less* than the *actual cost*."

In other words, the petitioner alleges that its real estate was assessed at its *cost* although its *actual value* was *less* than its *cost*. This is an allegation of *over-valuation* pure and simple, and in the determination of *that* question by the courts of the State of New York was distinctly involved, under the provisions of section 821 of the Consolidation Act, the action of the Commissioners *on the merits* in fixing the valuation.

Throughout the argument of the plaintiff-in-error, it is assumed here that the question to be resolved is, whether the action of the Tax Commissioners subjects the relator, merely because it is a corporation, to a rule of taxation more onerous than that applied to an individual owning the same property. The allegations in the petition present no such question for determination in this Court.

2. The Intent of the Statute.

It is obvious that the Legislature intended to secure throughout the entire State an equal assessment of property, both real and personal, and whether owned by individuals or corporations, and as already pointed out in our brief, page 8, Point II, the Court of Appeals have declared that the general purpose of our statutes in relation to assessment and taxation is to secure an assessment on *all* property "at its *actual value* and that they must be *construed* and *enforced* with *that* purpose constantly in view."

We cannot, therefore, concede, as counsel for petitioner aver that we do, that

> "the *statute* attempts to classify the property assessed "solely with reference to its ownership—namely, by "individuals or by corporations, and to apply a more "onerous rule of taxation to the same property if it "be owned by a corporation than that to which it "would be subject if it were owned by an indi-"vidual."
>
> Brief in reply to plaintiff-in-error, page 2.

So far from conceding any such "attempt" on the part of the statute, we emphatically and persistently deny that the particular act applying to the assessment of the capital stock of corporations, or the entire system of taxation in force in the State of New York, lends any support to the suggestion of inequality, as between the assessment of property of corporations and the assessment of property of individuals. The same rule is uniformly pre-

scribed for the valuation of all forms of taxable property. The single standard in every case is the actual value thereof.

Objection is made to the language of the statute, Laws of 1857, chapter 456, section 3, in that it provides for an assessment of the corporation upon the *actual* value of all its property, but provides for deducting only the assessed value of its real estate. It is urged that this

> " clearly recognizes that the *assessed* value of the real
> " estate will be less than its *actual* value and provides
> " that a corporation shall be taxed upon the margin
> " of difference as personal property, while an indi-
> " vidual is subject to no such tax."

Brief in reply, p. 2.

The suggestion of counsel is clearly misleading. The court of last resort in the State of New York has long since recognized that " the *assessed* value of real estate is " in *theory* its *actual value*."

People *ex rel.* Panama R. R. Co. *vs.* Commissioners, 104 N. Y., 244.

It was because the law of the State required the assessment of real estate at its actual value that it was deemed necessary to deduct the assessed value in determining the amount of capital to be assessed as such on the rolls; and it is a mattter familiar to the courts of New York that the Act of 1857, in requiring the deduction of the assessed value of real estate was regarded as protecting the interests of all parties in a more thorough manner than these interests had been protected by the tax law formerly in force. Originally it was the actual cost of the real estate that was required to be deducted in determining the value of capital; but as the value of the real estate might either diminish or increase after its purchase, the wiser and only proper rule to adopt was in every instance to require the assessment of the real estate at its actual value, and then

in the case of corporations to deduct that value as assessed before placing a valuation upon the capital, so called.

Even in the Equitable Gas Light case (144 N. Y., p. 94), cited persistently by counsel for the plaintiff-in-error in his briefs in this cause, from the opinion in that case, nothing can be spelled out in support of the theory that the Act of 1857 required the *systematic* transfer to capital and surplus account of any difference between the assessed and the actual value of the real estate of corporations. What the Court in that case *did* say, and *that* expression of opinion was based upon the *facts appearing in the record in that particular case*, was:

> "In case of corporations it *may happen* that an "under-valuation in the assessment of the real estate "as such will be corrected in its valuation as part of "the capital, and so the under-valuation may be "remedied and the whole property be subjected to "taxation at its *real value*."
>
> 144 N. Y., pp. 99, 100.

All that can be gathered from this excerpt is, that in exceptional cases, upon proof of a resulting erroneous assessment, by reason of the gross under-valuation in the assets of a corporation of its real estate, the statute permitted the correction of that error, in order that the whole property be subjected to taxation at its real value.

3. The Method of Applying the Statute.

It seems to be assumed by counsel for the plaintiff-in-error that the record establishes a construction and application of the law by the Tax Commissioners which necessarily deprived the plaintiff-in-error of the equal protection of the laws. This idea is repeated in various form throughout the argument, but it should be understood once and for all that the argument based upon this assumption, *has no foundation in the record before the Court.* There is no proof that the Commissioners or their Deputies have assessed

the real estate of individuals at less than its actual value or that, with the exception of the plaintiff-in-error, they have assessed the real estate of corporations at less than its actual value.

There is no proof or suggestion, even, that the Commissioners of Taxes have intentionally applied a different rule to corporations than the rule applicable under the law to individuals. Indeed, the argument of counsel rests in the last analysis upon certain expressions of opinion largely *obiter*, found in reported cases as to the general under-valuation of real estate, and seeks to fasten upon the Commissioners in the present proceeding, as finding of fact, a mere "observation" of the Court in some other proceeding.

We might as well urge that the Court will take judicial notice of the fact that since then tax officials have been arrested and imprisoned in the State of New York for not complying with the directions of the statute to assess the property of individuals and corporations at actual value.

We might even ask the Court to take judicial notice of the newspaper reports of committees of investigation in which it was alleged that real estate in the City of New York had been assessed entirely too high, and that, too, in the case of individual owners, but we cannot believe that the Court would seriously entertain the argument of counsel based upon no evidence, nor even upon pertinent allegations. It would, in effect, be asking the Court to pass upon a moot question of law that might never arise in actual administration, and certainly is not presented by the record in this case.

We do not dispute that if the *facts* justify the allegation of *relator's briefs*, the Supreme Court of the United States would have power, and it would be its duty to grant such relief *as the facts proved might warrant*. If the relator had *actually* been deprived of the

equal protection of the laws, it would make no difference whether that result followed from the statute or from the action of the tax officials in administering the statute, *provided the facts were proved and found in the case.* But in every instance cited by counsel for the plaintiff-in-error in his brief in reply either the law itself was obnoxious to the Constitution or it was *admitted* or *proved* that the administration of the law deprived the complaining party of his constitutional rights.

Thus, referring to page 5 of the brief in reply, in *People* vs. *Weaver*, 100 *U. S.*, 539, it appeared that the statutes of New York which permitted a party to deduct his just debts from the valuation of all his personal property did not permit such a deduction from the assessment of bank shares, and this court held that the result was to tax bank shares at a greater rate than other moneyed capital, and that therefore the New York statute was void as to bank shares and in conflict with the provisions of section 5219 of the Revised Statutes of the United States. There was no dispute in that case as to the fact that holders of National Bank shares were denied the privilege of having their debts deducted from the valuation of their bank shares, and it was conceded that this result, this denial, was practically required by the decisions of the State courts.

In *Whitbeck* vs. *The Mercantile Bank*, 127 *U. S.*, 193, it was proved that bank shares were assessed at sixty-five per cent. of their actual value, while other moneyed capital was only assessed at sixty per cent.; also that no allowance for debts was made to shareholders of banks, but that allowance was made to other owners of moneyed capital. Here again it was obvious that the complainant had an admitted grievance. It will be observed that he sought relief in *equity* and the court restrained the collection of the excess of taxes above the sixty per cent. applied to other owners of moneyed capital.

In *Scott* vs. *McNeal*, 154 *U. S.*, 34, this Court defined the issue as follows (page 39):

> "The fundamental question in the case is "whether letters of administration upon the estate "of a person who is, in fact, alive have any valid- "ity or effect as against him."

And the head-note of the report shows that the decision in that case has no bearing upon the present controversy:

> "A judgment of the highest court of a State by "which the purchaser at an administrator's sale "under order of a probate court of land of a liv- "ing person, who had *no notice of its proceedings*, "is held to be entitled to the land as against him, "deprives him of his property without due pro- "cess of law, contrary to the Fourteenth Amend- "ment of the Constitution of the United States, "and is reviewable by this Court on a writ of "error."

There was no conflict of evidence on the point that the plaintiff's land had been taken from him by a sale authorized by a probate court on the theory that he was legally dead, but when in fact he was alive, and that the proceeding had been without any notice whatever to the owner of the property.

In *Ex parte Virginia*, 100 U. S., 339, a county judge had been indicted in the United States District Court for deliberately excluding colored citizens from jury lists prepared by him under the law. The case came up on a writ of habeas corpus and certiorari. The Court held that the act of the judge in selecting jurors was ministerial and not judicial, and, although he derived his authority from the State, he was bound in the discharge of that duty to obey the Federal Constitution and the laws passed in pursuance thereof. The record showed that he had failed in the discharge of his duty by systematically and intentionally excluding colored citizens from the jury lists simply on the ground of their color.

In *Yick Wo* vs. *Hopkins*, 118 *U. S.*, 359, this Court was called upon to consider certain municipal ordinances of the City of San Francisco relating to the carrying on of the laundry business within the city limits. The ordinances by their terms required the consent of the Board of Supervisors to carry on the business within the city or county limits in other than brick or stone buildings. The evidence showed that the consent was withheld from Chinamen as distinguished from Caucasians, that the withholding of the consent was purely arbitrary and intentional and due to race prejudice, and that the right to withhold the consent was claimed under the ordinances of the City. This Court held that the ordinances violated the provisions of the Constitution, because they conferred upon municipal authorities *arbitrary power* at their own will, and without regard to discretion in the legal sense of the term, to give or withhold consent as to persons or places, without regard to the competency of the persons applying, or the propriety of the place selected, for the carrying on of the business. This clearly involved a denial of the right to equal protection of the law granted by the Constitution; and there was no attempt on the record to prove that the grievance complained of was not an actual one and that the exercise of power under the ordinances was not absolutely arbitrary. The Court then said (page 373):

> "For the cases present ordinances in actual
> " operation, and the *facts shown establish* an ad-
> " ministration directed so exclusively against a
> " particular class of persons as to warrant and re-
> " quire the conclusion that, whatever may have
> " been the intent of the ordinances as adopted,
> " they are applied by the public authorities charged
> " with their administration, and thus representing
> " the state itself, with a mind so unequal and op-
> " pressive as to amount to a practical denial by
> " the state of that equal protection of the laws
> " which is secured to the petitioners, as to all
> " other persons, by the broad and benign provis-

> " ions of the Fourteenth Amendment to the Con-
> " stitution of the United States. Though the law
> " itself be fair on its face and impartial in appear-
> " ance, yet, if it is applied and administered by
> " public authority with an evil eye and an unequal
> " hand, so as practically to make unjust and ille-
> " gal discriminations as between persons in sim-
> " ilar circumstances, material to their rights the
> " denial of equal justice is still within the prohibi-
> " tion of the Constitution."

And, again, on page 374 :

> " *The fact* of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists, except hostility to the race and nationality to which the petitioners belong, and which in the eyes of the law is not justified."

In *Chicago Company* vs. *Chicago*, 166 *U. S.*, 226, several questions of law were propounded and discussed which have no application to the case at bar. The real grievance of the railroad company was that a nominal award of one dollar had been made for damage to the railroad company by reason of the opening of a city street across its tracks. The company claimed that the award was in violation of of the Fourteenth Amendment to the Constitution of the United States, and that practically its property was being taken for public uses without compensation and without due process of law. The interesting discussion as to due process of law resulted in the declaration that the requirements of the Constitution as to due process of law are not fulfilled by mere formal compliance with the rules and regulations of practice as to notice, appearance and hearing before the proper tribunal. The fact that the railroad company had notice of the proceedings to condemn the right of way and appeared before the proper tribunal and was heard would not prevent this Court from inquiring into the proceedings to determine whether the decision of the

tribunal in effect deprived the company of its constitutional rights, but the record in that case disclosed the fact as found that the damage complained of was only nominal, and therefore the judgment of the tribunal before which the company had appeared was sustained on the merits.

Thus, in all these cases and in other cases cited by counsel for the plaintiff-in-error, it appears either that the law itself was plainly obnoxious to the Constitution, or that the case was presented in such a form and with such facts that the Federal Court was able to relieve the complaining party without transcending its own jurisdiction. Here the law itself and the whole body of the law of the State relating to taxation is beyond cavil, and the want of equal protection asserted in the briefs of counsel for the plaintiff-in-error is unsupported by evidence or even by appropriate allegation, much less by findings in the courts below.

4. The Real Grievance of the Plaintiff-in-Error.

If the statements *made in the briefs of counsel* were founded *in fact*, and established on the record, its *real grievance* would be *not over-valuation* but *inequality, not* that its property had been *assessed more than it is worth*, but that the property of some others, to wit, individual owners of real estate, *had been assessed at less than its actual value.*

It is hardly necessary to repeat that there is no evidence whatever, and no finding of fact, to support the assertions of inequality ; and as the courts below have found against the claim of over-valuation, there is left nothing for this Court to consider but the bare possibility under the provisions of the Act of 1857 of such a state of facts being developed as would disclose an unequal assessment against some New York corporation. This we consider as an academic discussion. But suppose the fact were developed that in a given case under the operation of the tax laws of New York

the property of the corporation were assessed at its full value, while the real estate of individuals in the same tax district was assessed at a lesser value, it would also have to appear that the courts of New York State had refused to relieve the relator from the inequality thus produced in the administration of the law before the Federal Court would assume to interfere. There is no allegation, and there is no proof, that the courts of New York would fail to relieve against inequality if established as matter of fact.

Indeed, upon this question; that is, how far the record would justify any interference to correct a grievance springing out of inequality, we think that this Court would reach precisely the same conclusion as the Court of Appeals of the State of New York in the Equitable Gas Light case, which the learned counsel for the plaintiff-in-error has cited so frequently. Upon that point the Court of Appeals said:

> " The act of the commissioners in under-valuing
> " the real estate in its assessment as such did not
> " estop the public nor relieve them of the duty in
> " ascertaining the value of the capital to estimate
> " the real estate at its full value. *We are not here*
> " *concerned with any question of inequality of assess-*
> " *ment as between the relator and other taxpayers.*
> " *We hold that the commissioners could legally disre-*
> " *gard the assessed value of the real estate in estimat-*
> " *ing the value of the capital, and the question of*
> " *legality is the only point now in question.*"
>
> People *ex rel.* The Equitable Gas Light Company *vs.* Barker, 137 N. Y., 534.

5. The Logical Result of the Contention of the Plaintiff-in-Error.

The attack upon the Act of 1856 is based wholly upon the assumption that that act must be so construed as to afford to corporations assessed and taxed under its provisions precisely the same rights and ob-

ligations that are conferred and laid on individuals assessed and taxed under other provisions of the Tax Law in the State of New York. It is obvious that if this is so, that there being no provision in the statutes relating to the assessment and taxation of individuals in the State of New York, allowing them a deduction for any surplus or reserved funds in excess of ten per cent. of the capital, that they on the theory of the plaintiff-in-error are upon that ground denied the equal protection of the laws, and that the result would be that that system of taxation of corporation is bad, and upon the same ground that the whole system relating to the assessment of individuals and corporations is equally bad. Such a result we cannot contemplate as possible.

New York, October 22, 1900.

THEODORE CONNOLY,
JAMES M. WARD,
Counsel for Defendants-in-Error.

Supreme Court of the United States.

No. 51.—October Term, 1900.

The People of the State of New York ex rel. The New York Clearing House Building Company, Plaintiff in Error,
vs.
Edward P. Barker, Theodore Sutro and James L. Wells, Commissioners of Taxes and Assessments of the City and County of New York.

In error to the Court of Appeals of the State of New York.

[December 10, 1900.]

Mr. Justice Peckham delivered the opinion of the Court.

The plaintiff in error comes here for the purpose of obtaining a review of the judgment of the New York Court of Appeals, which affirmed the judgments of the courts below dismissing a writ of certiorari.

The relator is a corporation created under the laws of the State of New York and a resident of and doing business in the city of New York, and it procured the writ, as provided for in the statute, to review an assessment of $165,999 made upon its capital in the regular course of proceedings to levy and collect the annual tax budget of the city for the year 1896. Plaintiff sought to review the assessment on the ground, among others, that it was illegal, and that to levy it, under the facts stated, would be to deny to the company the equal protection of the laws.

The facts upon which the question arises are these: The capital of the company was $900,000. The tax commissioners of the city of New York, in the course of their proceeding to tax the actual value of that capital, ascertained the actual value of what they termed the total "gross assets" of the company, which they found to have been..... $1,095,049

This value was arrived at from a statement of its property made by the company to the commissioners. By the term "gross assets," used by the commissioners, is meant the actual value of the capital and surplus of the company, but not its franchise. (*People ex rel. Union Trust Company* v. *Coleman*, 126 N. Y. 433.)

From this total they deducted—

(*a*) The debts of the company.....	$329,050	
(*b*) The assessed value of the real estate of the company, otherwise taxed.....	600,000	
		929,050
Leaving a balance of.....		$165,999

which was the amount upon which the company was assessed upon its capital aside from the assessment of $600,000 separately made upon its real estate.

The company claims that these "gross assets" should have been stated at $730,049, and the same deduction should be made as in the above statement, which would result in no assessment on the capital.

This difference of gross assets arises in this way: As made up by the commissioners they consist of the actual value of the building and lot owned by the company in New York city, in which it does business, taking it at its cost as admitted by the company in its statement made to the commissioners and which the commissioners found to be its actual value, viz..... $965,000
And to that is added other property..... 130,050

Making a total of..... $1,095,049,

while the item as claimed by the company is made up of the value of the same building and lot as it was assessed by one of the deputy tax commissioners for the purpose of separate taxation under the law, such assessed value being..... $600,000
Added to that was the same item of..... 130,050

for other property as stated by the commissioners, the gross assets of the company by this valuation amounting to..... $730,050

and the difference between the two items is seen to be $365,000. The plaintiff in error insists that in arriving at the actual value of the capital for taxation under the statute of 1857 (the third section of which is set out below) the real estate which goes to make up a part of such value should be put in at its value as assessed for taxation in a separate manner, while the commissioners claim that as the law provides that the assessment upon the capital shall be at its actual value, it is necessary to arrive at the actual value of the real estate before a particular assessment can be reached in regard to the capital, which includes it, and that in arriving at the actual value of the real estate they are not estopped from determining what that actual value is by the fact that for the purpose of a separate assessment the real estate had been mistakenly and improperly assessed at another and a lower figure.

These conflictiug claims arise out of the statute which provides for the taxation of corporations, their capital stock and surplus, and the general statute which provides for the taxation of real estate belonging either to individuals or corporations. That portion of the statute relating to the taxation of the capital of corporations which provides the method to be pursued reads as follows:

"The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, or as shall have been exempted by law, together with its surplus profits or reserved

funds, exceeding ten per cent. of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations, actually owned by such company, which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value and taxed in the same manner as the other personal and real estate of the county." (Laws of 1857, Chap. 456, Sec. 3.)

As the New York Court of Appeals, in *The People ex rel. &c.* v. *Commissioners of Taxes &c.*, (95 N. Y. 554,) has said, there is a most extraordinary confusion of ideas in the above section. Its meaning has, however, in some respects been made tolerably clear by the above cited case, together with those of *The People ex rel. Union Trust Company* v. *Coleman*, (126 N. Y. 435,) and *People ex rel. Equitable Gas Light Company* v. *Barker*, (144 N. Y. 94.)

In the first case it was stated that the general purpose of the statutes relating to assessments and taxation is to secure an assessment of all property, real and personal, at its actual value, and they are to be construed and enforced with this purpose in view. A construction of the statute in relation to other questions not material here was given in that case. In the case reported in 126 N. Y., it was held that the phrase "capital stock" contained in the section above quoted meant not the share stock owned by the individual members but the capital owned by the corporation, and that this capital was to be taxed, together with the surplus, after making the reductions provided for in the section, and that the law did not include, for purposes of assessment and taxation, the franchises of the company.

In the *Equitable Gas Light Company Case*, (144 N. Y. 94,) it was held that in arriving at the actual value of the capital for purposes of assessment, the assessors were not concluded by the assessed value of the real estate made for purposes of separate taxation if that assessment were a mistaken one, but might legally disregard such assessed valuation and estimate the real estate at its actual value, although it exceeded its assessed value.

Looking at the manner of assessing the real property of both individuals and corporations we find the general statute is as follows:

1 Revised Statutes, 393, sec. 17; 9th ed. p. 1685:

"All real and personal estate liable to taxation shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor."

And also 1 Revised Statutes, 389, sec. 6:

"The real estate of all incorporated companies shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals. . . ."

The special statute applying to New York city is substantially the same so far as assessment at full or actual value is concerned. (Consolidation Act, chap. 410, Laws of 1882, sec. 814.)

Under these statutes the tax upon real estate must be imposed in all cases, both of individuals and of corporations, upon its full and true value as found by the assessors. In the case of the individual, however, no resort can be had to any other proceeding by which that tax can be increased by any subsequent assessment upon the difference between the assessed and the actual value of the real estate, if any there should be. In the case of corporations, on the contrary, under the construction given the statute of 1857 by the Court of Appeals, in the last above-cited case, if the real estate should be mistakenly assessed under the general statute at an undervaluation for purposes of separate taxation, the difference between the assessed and the actual value of the real estate may be reached in making an assessment upon the actual value of the capital under the act above mentioned. By such a result it is claimed the company is denied the equal protection of the laws. It must be remembered there is no claim made that in any event the corporation is taxed upon any property not legally taxable or that it is taxed beyond the actual value of its property as provided by law. The only claim is that in this opportunity to correct a mistaken assessment upon its real estate in the case of a corporation when assessed upon its capital, which does not exist in the case of an individual, the corporation is denied the equal protection of the laws. This is the sole Federal question in the case.

It is seen that the laws of the State provide for no undervaluation of real estate owned by either individuals or corporations. Those laws provide in terms for the assessment of all real estate at its actual value, while the whole force of the contention of the plaintiff in error is based upon the fact of undervaluation, although it is in the very teeth of the statute, and is a plain violation of its provisions. If there were no undervaluation of real estate, or, in other words, if the laws of the State were complied with, the question sought to be raised by the plaintiff could not arise. The failure of the assessors in this one instance to assess the real estate of the company for separate taxation at its actual value, and its assessment at that value in assessing for taxation the actual value of the capital of the company, could obviously work no denial of the equal protection of the laws to the company, if individuals were in fact assessed for their ownership of real estate at its full and true value as required by law. If the law were faithfully carried out, no harm could in any event come to the plaintiff in error by this subsequent assessment of its real estate at its full value, for it would only pay the same as individuals, they being assessed upon their real estate at its full value. To raise the question which the plaintiff in error seeks it was therefore obviously necessary to allege and prove as a fact that there was habitual violation of law by undervaluation; that, in the language of Mr. Justice Miller, in *Supervisors* v. *Stanley*, (105 U. S. 305, 318,) the assessors "habitually and inten-

tionally, or by some rule prescribed by themselves or by some one whom they were bound to obey," undervalued real estate for assessment in New York city; or, as stated in *Cummings* v. *National Bank*, (101 U. S. 153, 155,) that a rule or system of valuation had been adopted by those whose duty it was to make the assessment, which was designed to operate unequally and to violate a fundamental principle of the Constitution, and that such rule had been applied not solely to one individual, but to a large class of individuals or corporations. It was said in that case that this was precisely the case made by the bill, and if supported by the testimony, the court thought relief should be given. There was both allegation and proof.

Both these cases related to the taxation of national bank shares, and the question was whether the tax levied violated the provisions of the national banking act on that subject.

In this record there is no averment and no proof of any violation of law by the assessors of New York. There is no allegation in the petition for the writ of certiorari that there has been any undervaluation of real estate, either with regard to individuals or corporations, but on the contrary it is therein asserted that the assessed valuation of the real estate of the company was its actual value, and that it had been overvalued in the valuation of the capital of the company. The mere fact that the law gives the assessors in the case of corporations two chances to arrive at a correct valuation of their real estate, when they have but one in the case of individuals, cannot be held to be a denial to the corporations of the equal protection of the laws, so long as the real estate of the individual is, in fact, generally assessed at its full value. But we are nevertheless asked by the argument at bar, in the absence of allegations or proof of habitual, or indeed of any undervaluation, to assume or take judicial notice of its existence, notwithstanding such undervaluation would constitute a clear violation of the law of the State. And this we are asked to do in order to reverse a judgment of a State court. Such a presumption of the violation of law and of their duty by the assessors, the Court of Appeals of New York expressly refused to adopt. (*People ex rel. Manhattan Railway Compeny* v. *Barker*, 146 N. Y. 304.) In delivering the opinion of the court, Judge Haight said, at page 312:

"The value of property is determined by what it can be bought and sold for, and there can be no doubt but that these various expressions used in the statutes all are intended to mean the *actual value* of the property. The commisssoners are sworn officers, and as such, in the absence of evidence to the contrary, are presumed to have done their duty. They have assessed the real estate at $7,323,200, and yet, under the method presented by their counsel for ascertaining the value of the relator's personal property, they now estimate the actual value of the real estate to be $45,591,352. We are aware that it is generally understood that in many localities

throughout the State assessors, in violation of their duties, assess the real estate in their localities at a sum less than its actual value, but in the absence of evidence that this has been done by the commissioners of taxes and assessments in the city of New York, we cannot assume that they have so transgressed, for the purpose of approving of their work in this case."

Should this court, with reference to the action of the public and sworn officials of New York city, assume without evidence that they have violated the laws of their State, when the highest court of the State itself refuses, in the absence of evidence, to assume any such violation? We think not.

Nor did the Court of Appeals act upon any judicial notice of the fact of undervaluation in the case of *The Equitable Gas Light Company*, (144 N. Y.,) already cited. While the assessed value was stated, the commissioners in their return to the writ of certiorari distinctly showed that the actual was more than the assessed value, and the only question in the case was whether in arriving at the actual value of the capital they were bound by the assessed and could not be permitted to show the true value of the real estate. The court held they were not so bound.

What the court remarked about the practice of undervaluation was not the basis of its judicial action, for the facts were distinctly proved. The subsequent case in 146 N. Y. (*supra*) is a direct authority for the refusal to make any presumption of a violation of official duty.

This court did not presume a violation of duty in *Cummings* v. *National Bank*, (*supra.*) On the contrary, the bill alleged the facts, and the testimony supported the allegations. In extenuation of the practice alleged and proved, the court remarked in passing (page 162) that it was not limited to the State of Ohio, and that it was matter of common observation that in the valuation of real estate the rule was habitually disregarded. Although the justice who wrote the opinion did speak of the fact as matter of common observation, neither he nor the court took judicial notice thereof, but only those facts which had been pleaded and testimony to sustain which had been duly given formed the basis of judicial action. We will not and ought not to presume a violation in the absence of allegations and proofs to that effect.

Whether, if the case were proved, as assumed by counsel, it would in fact amount to any such discrimination against corporations as to work a denial to the plaintiff of the equal protection of the laws, is a question not raised by this record, and, therefore, not necessary to be decided.

We think the plaintiff in error has failed to show any error in the record, and the judgment of the Court of Appeals of New York is, therefore, *Affirmed.*

No. 52.

The People of the State of New York ex rel. The New York Clearing House Building Company, Plaintiff in Error, *vs.* Edward P. Barker, Theodore Sutro and James L. Wells, Commissioners of Taxes and Assessments of the City and County of New York.	In error to the Court of Appeals of the State of New York.

Mr. Justice PECKHAM delivered the opinion of the Court.

This case involves the taxes of 1897, and the same question in substance arises herein that has just been decided in the preceding case, and the judgment is, therefore,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 62.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. THE NEW YORK CLEARING HOUSE BUILDING COMPANY, PLAINTIFF IN ERROR,

vs.

EDWARD P. BARKER, THEODORE SUTRO, AND JAMES L. WELLS, COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

FILED MAY 8, 1899.

(17,399.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 289.

THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* THE NEW YORK CLEARING HOUSE BUILDING COMPANY, PLAINTIFF IN ERROR,

vs.

EDWARD P. BARKER, THEODORE SUTRO, AND JAMES L. WELLS, COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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a Court of Appeals of New York, on Appeal from the Appellate Division of the Supreme Court for the First Department.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Relator and Appellant,

against

EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Respondents.

(Taxes of 1897.)

Papers on Appeal.

Opdyke, Willcox & Bristow, attorneys for relator and appellant, 20 Nassau street, borough of Manhattan, New York, N. Y.

John Whalen, attorney for respondents, 2 Tryon row, borough of Manhattan, New York, N. Y.

b STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

To the judges of the United States Supreme Court:

The return of the judges of the court of appeals of the State of New York in pursuance to the writ of error in the case of The People of the State of New York on the relation of The New York Clearing House Building Company, appellant, *vs.* Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, respondents, taxes of 1897, is contained in the papers and proceedings hereto attached.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this 29th day of April, A. D. 1899.

[Seal State of New York Court of Appeals.]

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

c Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 14th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur March 14th, 1899.

d THE PEOPLE, &c., *ex Rel.* THE NEW YORK Clearing House Building Company, Appellant,
ag'st
EDWARD P. BARKER & Others, Commissioners of Taxes, &c., Respondents.
} Taxes of 1897.

Be it remembered, that on the 31st day of January, in the year of our Lord one thousand eight hundred and ninety-nine, The New York Clearing House Building Company, the appellant in this proceeding, came here into the court of appeals, by Opdyke, Willcox & Bristow, Esqrs., its attorneys, and filed in the said court a notice of appeal and return thereto from the judgment & order of the appellate division of the supreme court in and for the first judicial department. And Edward P. Barker & others, commissioners of taxes, &c., the respondent- in said proceeding, afterwards appeared in said court of appeals by John Whalen, Esq., corporation counsel; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

e Whereupon, the said court of appeals having heard this cause argued by Mr. David Willcox, of counsel for the appellant, and by Mr. James M. Ward, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment and order of the supreme court appealed from in this proceeding, be in all things affirmed. And it was further ordered and adjudged that the respondent- recover against the appellant costs of appeal to this court.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

f Therefore, it is considered that the said judgment & order be in all things affirmed with costs as aforesaid, and stand in full force, strength and effect.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *March 14th*, 1899.

Seal State of New York Court of Appeals.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said proceeding in the court of appeals, with the papers originally filed therein attached thereto.

W. H. SHANKLAND, *Clerk.*

1 N. Y. Supreme Court, Appellate Division, First Department.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company
against
EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.
} Taxes of 1897.

Statement under Rule 41.

The writ in this proceeding was issued on July 14th, 1897, pursuant to an order of the same date made by Hon. Charles H. Truax, J., allowing the same, and was served on the commissioners of taxes and assessments on July 15th, 1897, and was filed in the office of the clerk of the city and county of New York on July 17th, 1897. The return of the said commissioners thereto was filed and served on the attorneys for the relator on November 23d, 1897.

The names of the original parties in full were as above stated, and no change of parties or attorneys has taken place pending this proceeding.

2 *Order for Writ.*

At a special term, part II, of the supreme court of the State of New York held at the court-house in the city and county of New York on the 14th day of July, 1897.

Present: Hon. Charles H. Truax.

In the Matter of the Application of THE NEW YORK CLEARING HOUSE BUILDING COMPANY for a Writ of Certiorari to the Commissioners of Taxes and Assessments of the City and County of New York.

On reading and filing the petition of the above-named applicant, The New York Clearing House Building Company, verified July 13, 1897, and on motion of Opdyke, Willcox & Bristow, attorneys for said applicant, it is,

Ordered that a writ of *certiorari* be allowed and issued as prayed for in said petition, directed to Edward P. Barker, Theodore Sutro and James L. Wells, the commissioners of taxes and assessments of the city and county of New York; that a return thereto must be made and served upon the relator's attorneys within the time below specified; that said writ be returnable at a special term, part II, of this court to be held on the first Monday of September, 1897, at the county court-house in the city of New York, at the opening of court on that day, or as soon thereafter as a hearing can be had, and that said writ be allowed and signed and sealed by the clerk of this court.

Enter. C. H. T., *J.*

3 Supreme Court, New York County.

To the supreme court of the State of New York:

The petition of the New York Clearing House Building Company, claiming to be aggrieved by the assessment hereinafter specified, respectfully shows to this court as follows:

I. The petitioner was duly incorporated upon January 18, 1894, pursuant to the business corporation law of the State of New York, and ever since that time, by virtue thereof, has been engaged at the city of New York in performing the functions specified in its certificate of incorporation, namely: "The purchase of land and the erection, fitting and furnishing and the maintenance of buildings thereon in which there shall be accommodations secured for the use of the New York Clearing House Association." The petitioner is engaged in no other business whatsoever.

II. Upon the second Monday of January, 1897, the total of the shares of the capital stock of the petitioner was $900,000.

Its gross assets then were not more than	$629,953 99
This included amount invested in real estate in New York county, being both the assessed and actual value thereof.....	600,000 00
Balance	$29,953 99
The actual indebtedness of the petitioner then was ..	230,000 00

Therefore, on the second Monday of January, 1897, the total gross assets of the petitioner exclusive of its real estate did not exceed $29.953.99; on said second Monday of January, 1897, the indebtedness justly due and owing by the petitioner amounted to

4 $230,000. The petitioner, therefore, upon the said second Monday of January, 1897, had no personal property or capital stock whatsoever, which was subject to assessment or taxation in the city and county of New York.

III. One of the deputy tax commissioners in the city of New York, under the direction of the commissioners of taxes and assessments for that city and county, who then were and still are Edward P. Barker, Theodore Sutro and James L. Wells, between the first Monday of September, 1896, and the second Monday of January, 1897, assessed the petitioner upon the value of the personal property or capital stock of the petitioner, subject to assessment and taxation within that city and county in the sum of $236,683, and set down and included the same as the valuation for the purposes of assessment and taxation of the personal property or capital stock of the petitioner in the assessment lists or rolls or "annual record of the assessed valuation of real and personal estate," for the year 1897, kept in the office of said commissioners.

IV. Thereafter, and during the time that said assessment lists or rolls or annual record were open to public inspection and to correction by said commissioners, they notified the petitioner thereof and requested it to furnish a statement of its condition for purposes

of assessment on said second Monday of January, 1897. The petitioner, considering itself aggrieved by such assessment and valuation, in due time attended before said commissioners of taxes and assessments and duly made application to said commissioners to have such assessment and valuation corrected and altogether canceled, and made and delivered to said commissioners, in due form of law, a statement in writing under oath, truly and correctly showing its condition for the purposes of assessment on said second Monday of January, 1897, setting forth the matters and things
5 hereinbefore stated, a correct copy of which statement is hereto attached and marked "Exhibit A," and at the same time the petitioner delivered to said commissioners a letter containing further statements as to the facts, a correct copy of which is hereto attached and marked "Exhibit B." The said commissioners thereupon refused to cancel said assessment, but, notwithstanding petitioner's objections thereto, fixed it, as above stated, at the sum of $236,683, and have included and entered an assessment at that sum against the petitioner upon its personal estate or capital stock for the year 1897 in the assessment-rolls, prepared by said commissioners, and delivered by them to the board of aldermen of the city and county of New York, as hereinafter set forth. The petitioner is not advised in what manner the said commissioners arrived at this amount. There is no lawful method of dealing with the facts which would lead to this result. Under the method of assessment adopted by the commissioners, the correctness of which is not conceded, ten per cent. of the capital stock amounting to $90,000, should be deducted, thus reducing the assessments, in any event, to $146,683.

V. No evidence or information whatever other than the aforesaid statements of the petitioner was presented or known to or considered by said commissioners of taxes and assessments in making their determination. Said evidence was and is entirely uncontradicted; was accepted as sufficient by said commissioners, and no notice was ever given by the said commissioners to the petitioner that further or other evidence or information was required or desired by them, although the petitioner was ready and willing at all times to submit to the fullest examination by said commissioners concerning the same. The said statements were absolutely accurate, correct and true in every respect.

VI. Upon July 6, 1897, the assessment-rolls of real and personal estate in the city and county of New York for the year 1897, containing the assessment aforesaid against the petitioner at the sum of $236,683, were completed, transmitted and delivered by said commissioners of taxes and assessments to the board of aldermen of the city of New York and received and filed by said board,
6 and thereafter upon said day said commissioners gave public notice, as required by law, setting forth that the assessment-rolls of real and personal estate in said city for the year 1897 had been finally completed and had been delivered to the board of aldermen of said city and that such assessment-rolls would remain open to public inspection in the office of the clerk of said board of aldermen for a period of fifteen days from the date of said notice.

VII. The petitioner respectfully shows and specifies that the assessment aforesaid upon the personal property or capital stock of the petitioner and the decision or action of said commissioners of taxes and assessments of the city and county of New York, in imposing the same, were and are illegal and are erroneous by reason of overvaluation, and gives and specifies the particulars and grounds of said illegality, and the extent of such overvaluation, as the same are set forth in this petition and the exhibits attached thereto.

The total gross assets of the petitioner on said second Monday of January, 1897, were $629,953.99 and no more. From this sum, according to law, the said commissioners, before making an assessment upon petitioner's capital stock or personal property, should have deducted the following sum, which is not lawfully assessable in the city and county of New York as part of its personal property or capital stock, namely: Assessed value of real estate in New York county, $600,000. The balance of the petitioner's assets remaining after such deduction amounted to $29,953.99 and no more; that was the entire amount of its personal property. But the indebtedness of the petitioner upon the said second Monday of January, 1897, amounted to $230,000; and this, according to law, should have been deducted from its taxable assets. Deducting the assessed value of the petitioner's real estate from its gross assets, real and personal, its indebtedness, therefore, upon the said second Monday of January, 1897, exceeded the remainder by $200,046.01, as appears by the foregoing statement.

7 The tax imposed upon the capital stock of corporations by the tax laws (sec. 12) is a tax upon their property other than franchises. In the case of individuals the ownership of real estate subjects the owner to taxation upon the assessed value of the real estate and not otherwise. The fourteenth amendment to the Constitution of the United States provides (sec. 1) that no State "shall deny to any person within its jurisdiction the equal protection of the laws." Corporations are persons within the meaning of this provision. The commissioners of taxes and assessments have adopted an erroneous construction of the statute in question, in that they have construed it as subjecting the petitioner, because it owns real estate, to taxation not only upon the assessed value of the real estate, but also upon its actual cost, although the assessed value is the same as the actual value and much less than the actual cost. This construes the statute as imposing on one class of persons, namely, corporations, taxation at a greater rate than upon another class of persons by reason of ownership of property identically similar in character. Obviously, such a construction renders the statute unconstitutional. Moreover, it is inconsistent with the provision of the tax law that "the real estate of all incorporated companies liable to taxation shall be assessed in the tax district in which the same shall lie, *in the same manner* as the real estate of individuals." (Sec. 11.)

VIII. The petitioner, therefore, upon said second Monday of January, 1897, had no personal property or capital stock which was subject to assessment or taxation within the city and county of New

York, and the decision or action of the commissioners of taxes and assessments of said city and county in assessing the petitioner thereon and the assessment amounting to $236,683 imposed by them upon the personal property or capital stock of the petitioner as above stated, were and are illegal by reason of the particulars and grounds specified and given in this petition and the exhibits
8 attached thereto, and the same were and are erroneous by reason of overvaluation inasmuch as the petitioner had upon said second Monday of January, 1897, no personal property or capital stock subject to taxation within the said city and county. The petitioner is or will be injured by such illegal and erroneous assessment, because the president of the board of aldermen in the name of the board and as one of its acts, has already authorized and requested the commissioners of taxes and assessments to estimate and compute the taxes to be imposed under and by virtue of said rolls, and to cause the said estimation and computation to be properly set down and extended in the said tax or assessment rolls, and to perform such other duty connected with the said tax or assessment rolls or books as the said president is authorized or required by law to have done. And unless said assessment be reviewed according to law and canceled the petitioner will be compelled to pay taxes thereon at the rate at which taxes may be payable, notwithstanding that upon the second Monday of January, 1897, it had and now has no taxable personal property or capital stock within the city and county of New York. No previous application has been made in the premises for the allowance and issue of a writ of *certiorari*.

Wherefore, the petitioner prays that a writ of *certiorari* may be issued and allowed by this honorable court, directed to the commissioners of taxes and assessments for the city and county of New York, commanding them to certify and return to this court all and singular their proceedings, decisions and action in the premises, with the reasons therefor, and the evidence considered by them, and the dates respectively, and all and singular said assessments and the documents and papers before them relating thereto, touching or concerning the valuation or assessment of the personal property or capital stock of the petitioner, or in anywise in respect thereto, and all and singular their decisions and actions thereon and the statement and protests, record and papers before them
9 touching or concerning the same, and that the said decision and action of said commissioners may be reviewed and corrected on their merits and that the same may be reversed and altogether held for nothing, and that the aforesaid errors may be corrected according to law, or that the petitioner may have such other or further relief in the premises as may be meet.

And the petitioner will ever pray, &c.

THE NEW YORK CLEARING HOUSE BUILDING COMPANY,

[SEAL.] By G. G. WILLIAMS, *President.*

OPDYKE, WILLCOX & BRISTOW,

Attorneys for Petitioner, 20 *Nassau Street, New York.*

CITY AND COUNTY OF NEW YORK, *ss.*:

G. G. Williams, being duly sworn, says that he is the president of The New York Clearing House Building Company, the petitioner above named; that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; that the grounds of deponent's belief as to all matters in said petition not stated upon his knowledge are his familiarity with said petitioner's business affairs as said president thereof; that the reason why this verification is not made by the said petitioner is that the said petitioner is a domestic corporation, and unable to make the same.

G. G. WILLIAMS.

Sworn to before me this 13th day of July, 1897.
[SEAL.] NEWTON B. PHELPS,
Notary Public, N. Y. Co.

10 EXHIBIT A.

City of New York, department of taxes and assessments.

COMMISSIONERS' OFFICE,
STEWART BUILDING, 280 BROADWAY.

☞ Please state the full name of the corporation.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York for and in behalf of the New York Clearing House Building Company, showing its condition, for the purpose of assessment, on the second Monday of January, 1897.

Total gross assets, including real estate		$629,953 99
Of above—real estate	$600,000 00	
personal property	$29,953 99	
Capital stock actually paid in, or secured to be paid in		$900,000 00
Amount of surplus earnings		$ None.
Rate of dividend for last year, or last annual dividend		$ None.
Amount actually paid for real estate owned by you		$1,036,728 66

Actual value at which such real estate is carried on your books as an asset:

Nominally at cost for the purpose of balancing accounts and not otherwise.

Indebtedness in detail as follows:

Loan from the New York Clearing House Association	$230,000

Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

11 Assessed value of real estate:
Describing particularly by ward and ward map numbers.

Ward 1, ward map No. 1028, Cedar street.....	$600,000
Amounts invested in the stocks of other corporations which are taxed upon their capital.....	$ None.
Amount invested in U. S. securities.....	$ None.

If the stock of the company is worth *less than par*, state the *actual value*, and give the facts under oath which will justify such estimate of its value.

The stock of the company on January 11, 1897, was worth less than par. Its actual value is above stated as $629,953.99, against which the company owes $230,000, leaving net $399,953.99. The facts upon which this statement of its value is based, are as follows: Its personal property amounted to $29,953.99. Its only other property consisted of the parcel of real estate above described. The company paid for this land the amount of $575,000. Since purchasing this land the company has expended in erecting a building thereon the amount of $461,728.66, of which, $230,000 were loaned to it by the New York Clearing House Association, which holds all the shares of stock of the company, and for whose use the said building was specially constructed. The said building was planned, arranged and fitted expressly for the purpose of the operations of the said Clearing House Association in effecting the daily exchanges between the banks which are members thereof, and in settling the balances arising upon such exchanges. The operations of the clearing-house required a low, broad building with large rooms well lighted and easily accessible. The character of the building is, therefore, widely different from the business buildings in the lower part of the city, and is not fitted for any other use than that for which it was designed, namely, that of a bank clearing house. The building, therefore, does not add to the value of the land as

12 real estate. The amount for which the company's real estate would sell under ordinary circumstances does not exceed its assessed value of $600,000.

The principal office or the place of transacting the financial business of the said corporation is situated in the first ward of the city of New York, at No. 77 Cedar St.

CITY OF NEW YORK, *ss:*

I, Wm. Sherer, the manager of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

WILLIAM SHERER, *Manager.*

Sworn to before me this 29th day of April, 1897.

C. E. BACON,
Notary Public.

[NOTARIAL SEAL.]

Cert. filed in New York.

☞ The commissioners are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

13 EXHIBIT B.

Wm. S. Opdyke. David Willcox. Wm. B. Bristow.

Opdyke, Willcox & Bristow, 20 Nassau St., New York.

APRIL 29, 1897.

To the commissioners of taxes and assessments of the city and county of New York:

The New York Clearing House Building Company, in handing you the accompanying statement showing its condition for purposes of assessment on the second Monday of January, 1897, insists that its capital stock is not subject to any assessment for taxation for the current year, after making the deductions authorized by law.

The statement shows that, while its nominal capital stock is $900,000, it owes $230,000, and its only assets are its real estate in Cedar street, New York, and personal property of the value of $29,953.99.

Its real estate has been assessed for taxation at $600,000, and the company insists that the value of this real estate for purposes of taxation does not, as a matter of fact, exceed this said assessed value of $600,000. The company paid for the land embraced in this property $575,000. It has expended a large amount in putting up a building on this land for a special purpose, but this building is not fitted for general purposes, and so far as the market value of the property for sale is concerned, the building has not added to the value of the land. Since the property is to be assessed for taxation at the value for which it would under ordinary circumstances sell, the value of this real estate does not exceed $600,000.

14 Therefore, after making the deductions of the assessed value of the real estate and the company's obligations, the company is not assessable for any amount for the current year.

Moreover, whatever the commissioners may consider the value of this real estate, irrespective of the amount for which it has been assessed by them as real estate, the company insists that it is not assessable in respect to its capital stock by reason of its ownership of this real estate, in any amount in excess of its assessed value. The "capital stock" subjected to taxation in this State is merely the real and personal property owned by the corporation and its franchises. The real estate has been assessed as such. The company, as owner of this property, cannot be subjected to a greater

amount of assessment and taxation in respect thereto, because it happens to be a corporation instead of an individual. An individual owning the building would pay taxes in respect to his ownership of such property only upon the assessed value thereof, and no different rule can be applied in the case of ownership by a corporation. Any such rule would be in violation of the 14th amendment of the Constitution of the United States, under which corporations and individuals are alike entitled to the equal protection of the laws.

Therefore, even if the commissioners should believe that the company's real estate has a margin of value, by reason of its cost or otherwise, above its assessed valuation, it is insisted that, in valuing the company's capital stock for assessment, no such margin of value can be added to the other property of the company. The company's real estate has been already assessed. No portion of the value of this land can be considered as a portion of the company's personal estate. This would be admitted in the case of an individual, and the laws of the State of New York provide that the manner of assess-
15 ment and taxation of the property of corporations must be the same as that of individuals, and the United States Constitution guarantees to corporations, like other citizens, the equal protection of the laws.

Since, therefore, the debts of the company exceed the value of its personal property, and its real estate has already been assessed at its full value, and, even if the latter statement is not admitted, the commissioners have no power to assess the corporation upon its capital stock in respect of any margin of value of its real estate; it is insisted that the company is not liable to any assessment upon its capital stock. The company, therefore, applies to have any assessed valuation upon the stock of the company stricken from the annual record of assessed valuation of real and personal estate for the present year.

Yours respectfully,

N. Y. CLEARING HOUSE BUILDING CO.
OPDYKE, WILLCOX & BRISTOW, *Att'ys.*

16 *Writ of Certiorari.*

The People of the State of New York on the relation of The New York Clearing House Building Company to Edward P. Barker, Theodore Sutro, and James L. Wells, Esqrs., commissioners of taxes and assessments for the city and county of New York, Greeting:

Whereas we have been informed by the duly verified petition of the petitioner, The New York Clearing House Building Company, that certain proceedings were had before you in regard to the assessment and taxation for the year 1897 of the said petitioner, and that you have decided to assess the said petitioner upon and in respect of the personal property or capital stock held by it, upon the second Monday of January, 1897, in the sum of $236,683, and found that

it is assessable at that sum for the year 1897, and have refused to correct or cancel the said assessment upon the petitioner's application, although the same was claimed to be illegal and erroneous, by reason of overvaluation, because the petitioner then had and now has no personal property or capital stock within the city and county of New York subject to taxation, and you have included the said assessment in the assessment rolls for the year 1897, prepared by you for delivery to the board of aldermen of the city and county of New York and delivered to said board, and it is specified in said petition that the said assessment is illegal, giving the particulars of the alleged illegality, and is erroneous by reason of overvaluation, stating the amount of such overvaluation, and that the petitioner will be injured by such alleged illegal or erroneous assessment, and fifteen days have not expired since such delivery of said assessment-rolls, and we, being willing for certain causes to be certified of such proceedings and of the action had by and before you, the said commissioners, in the matter of the assessment for taxation of the petitioner for the year 1897, and of the decision made by
17 you on the application of the said petitioner in that regard, do command you that you certify and return under your hands and as amply as the same remains before you:

First. Those proceedings regarding the said assessment against the petitioner with all things appertaining thereto, and with that part of the record of valuation and assessment relating to the same.

Second. Any and all papers submitted by the petitioner and filed with you, and any examination under oath or otherwise of said petitioner.

Third. Any other evidence or information, if any, before you or considered by you in arriving at your decision, and if there were no such other evidence or information that you so state.

Fourth. Your reasons for arriving at such decision and the method adopted by you in arriving at the same and under what law and by virtue of what power the said assessment is made.

Unto our supreme court at a special term, part II thereof, to be held in the court-house, in the city of New York, on the first Monday of September, 1897, at the opening of court on that day, or as soon thereafter as a hearing can be had, so that our supreme court may further cause to be done thereupon what of right and according to law ought to be done, and have you then and there this writ; and the return hereto must be made and served upon the relator's attorney within the time above specified.

Witness, Hon. Charles H. Traux, one of the justices of said supreme court, at the court-house, in the city of New York, on the 14th day of July, 1897.

By the court:

[SEAL.] HENRY D. PURROY, *Clerk.*

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator, 20 Nassau Street, New York.

18 The foregoing writ is allowed this 14th day of July, 1897.
CHARLES H. TRUAX, *J. S. C.*

To Messrs. Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments for the city and county of New York:

Please take notice that a writ of *certiorari* has been duly granted herein, of which the foregoing is a copy, and the original of which is herewith exhibited to you, and will be forthwith filed in the office of the clerk of this court.

Dated New York, July 14, 1897.

Yours, &c., OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator.

19 *Return.*

(Writ.)

The People of the State of New York on the relation of The New York Clearing House Building Company to Edward P. Barker, Theodore Sutro, and James L. Wells, Esqs., commissioners of taxes and assessments for the city and county of New York, Greeting:

Whereas, we have been informed by the duly verified petition of the petitioner, The New York Clearing House Building Company, that certain proceedings were had before you in regard to the assessment and taxation for the year 1897 of the said petitioner, and that you have decided to assess the said petitioner upon and in respect of the personal property or capital stock held by it, upon the second Monday of January, 1897, in the sum of $236,683, and found that it is assessable at that sum for the year 1897, and have refused to correct or cancel the said assessment upon the petitioner's application, although the same was claimed to be illegal and erroneous, by reason of overvaluation, because the petitioner then had and now has no personal property or capital stock within the city and county of New York subject to taxation, and you have included the said assessment in the assessment-rolls for the year 1897, prepared by you for delivery to the board of aldermen of the city and county of New York, and delivered to said board, and it is specified in said petition that the said assessment is illegal, giving the particulars of the alleged illegality, and is erroneous by reason of overvaluation, stating the amount of such overvaluation, and that the petitioner will be injured by such alleged illegal and erroneous assessment, and fifteen days have not expired since such delivery of said assessment-rolls and we being willing for certain causes to be certified of such proceedings and of the action had by and before you, the said commissioners, in the matter of the assessment for taxa-

20 tion of the petitioner for the year 1897, and of the decision made by you on the application of the said petitioner in that regard, do command you that you certify and return under your hands and as amply as the same remains before you:

First. Those proceedings regarding the said assessment against the petitioner with all things appertaining thereto, and with that part of the record of valuation and assessment relating to the same.

Second. Any and all papers submitted by the petitioner and filed with you, and any examination under oath or otherwise of said petitioner.

Third. Any other evidence or information, if any, before you or considered by you in arriving at your decision, and if there were no such other evidence or information that you so state

Fourth. Your reasons for arriving at such decision and the method adopted by you in arriving at the same and under what law and by virtue of what power the said assessment is made.

Unto our supreme court at a special term, part II thereof, to be held in the court-house, in the city of New York, on the first Monday of September, 1897, at the opening of court on that day, or as soon thereafter as a hearing can be had, so that our supreme court may further cause to be done thereupon what of right and according to law ought to be done, and have you then and there this writ; and the return hereto must be made and served upon the relator's attorney within the time above specified.

Witness Hon. Charles H. Truax, one of the justices of said supreme court at the court-house, in the city of New York, on the 14th day of July, 1897.

By the court:

[SEAL.] HENRY D. PURROY, *Clerk.*

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator, 20 *Nassau Street, New York.*

21 Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Co.	
against	Taxes of 1897.
EDWARD P. BARKER, THEODORE SUTRO, and James L. Wells, the Commissioners of Taxes and Assessments of the City of New York.	

To the supreme court of the State of New York:

We, Edward P. Barker, Theodore Sutro and James L. Wells, commissioners of taxes and assessments of the city of New York, respectfully return to the writ of *certiorari* hereto prefixed and issued out of this court on the 14th day of July, 1897, as follows:

Between the first Monday of September, in the year 1896, and the second Monday of January, 1897, the deputy tax commissioners of the city of New York, under our direction, assessed all the taxable property in the several districts of said city that were assigned to them respectively for that purpose, and furnished to us under oath, a detailed statement of all such property; that said deputies

have personally examined each and every house, building, lot, pier or other assessable property, giving the street and ward map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known; also, in their judgment, the sum for which such property, under ordinary circumstances, would sell, with such other information in detail, relative to personal property or otherwise, as the commissioners
22 of taxes or assessments from time to time required; and the assessed valuations so made of all such property within the city of New York were duly entered in detail in books provided for that purpose by the comptroller, and kept in our office in the city of New York, called "The annual record of assessed valuation of real and personal estate." The deputy tax commissioner assigned to that duty, under our direction, between said times, duly assessed the personal property (capital and surplus) of the relator for the year 1897, at the sum of nine hundred thousand ($900,000.00) dollars, and duly entered such assessment in the said books, and thereafter notice of such assessment was sent to said relator.

The said books were kept open in our office, for examination and correction, from the second Monday of January, 1897, until the first day of May, 1897, and previous to and during the time said books were open for inspection the fact was duly advertised according to law. During the time said books were open to public inspection, as above stated, written application was made by the said relator to have the assessed valuation corrected. And thereupon the said relator submitted to us, and filed in our office, a statement in writing, of which a copy marked "Schedule A," is hereto attached and made part of this return. Thereupon we examined into the complaint so made by the relator and considered such application and fixed the amount of such assessment at the sum of two hundred and thirty-six thousand six hundred and eighty-three ($236,683.00) dollars, which we believed to be just, and which we decided to be the sum for which said relator was lawfully assessable for the year 1897, and thereupon said assessment theretofore entered in said books of annual record was corrected in accordance with our decision. A copy of said assessment, as it appears upon said books of annual record, marked "Schedule B," is hereto annexed and made part of
23 this return. The figures erased on said schedule indicate the original assessment made by the deputy tax commissioner.

Thereafter, we caused to be duly prepared from said books of annual record assessment-rolls for each of the several wards of the said city, and annexed to each of said rolls our certificate that the same was correct, in accordance with the entry in said books of record, and on the sixth day of July, 1897, the rolls thus certified were delivered by us to the board of aldermen of the city of New York, at the city hall in said city.

We further return that the method by which we made our said assessment for the purpose of taxation for the year 1897, was as follows:

Prior to making this assessment we had been advised by the

court of appeals that the law governing the taxation of corporations, to wit, chapter 456 of the Laws of 1857, required the valuation of the whole property owned by the corporation, whether real or personal, or both, in order to ascertain the capital which was the subject of taxation, and that from the aggregate of the whole property, when ascertained, was to be deducted the assessed value of the real estate, and, after a further deduction of debts and any exemptions allowed by law, the balance was the capital of the corporation subject to assessment.

On the second Monday of January, 1897, the deputy tax commissioner assigned to that duty duly assessed, for the purposes of taxation for the year 1897, the personal property of the relator (capital and surplus) at the sum of $900,000.00.

Thereafter, and within the time required by law, the relator filed with us, upon an application for the revision and correction of the assessment now under review, what purported to be an exhibition of its condition for the purposes of assessment for the year 1897, verified by William Sherrer, its manager, on the 29th day of April, 1897, and a written argument of its counsel, claiming to pro-
24 pound to us the law which should govern our action upon the application of the relator for the cancellation of the assessment now under review.

For the reasons which are hereinafter set out more at large, we declined to accept the conclusions of counsel for the relator as a correct statement of the law, but being, on the contrary, advised that upon the facts the assessment as fixed by us was in entire accordance with the law which should govern our action, and, being satisfied that the said assessment was in all respects just and proper, we finally fixed the assessment against the capital and surplus of the relator for the purposes of taxation for the year 1897 at the sum of $236,683.00.

The relator had sued out its writ of *certiorari* to review the assessment against it upon its personal property (capital and surplus) for the purposes of taxation for the year 1896, and from the proceedings had before us in relation to the assessment for 1896, the undisputed facts were that the relator was a domestic corporation having a paid-up capital of $900,000.00. That its assets consisted of a parcel of land on Cedar street and a building erected thereon, which, together, had cost about $965,000.00. That its personal assets, consisting of the equipment of the building and cash on hand, amounted to $130,049.02. That its indebtedness was $329,050.28, and that the said indebtedness at that time was made up of two items, money borrowed in the sum of $230,000.00 and money owing on a building contract amounting to the sum of $99,050.28. That the assessed value of the real estate of the relator was in the year 1896, $600,000.00.

In its application filed with us relating to the assessment for 1897 the item of indebtedness for money borrowed on the building contract had entirely disappeared, and, from its statement, we ascertained that the claim of the relator was that it had no property

subject to taxation under the provisions of chapter 456 of the
25 Laws of 1857, either real or personal, or both, in excess of the sum of $629,953.99, and that of the said total valuation of its property, it charged $600,000.00 to real estate, claiming that the assessed value which was that figure represented the actual value of its real estate, and that in addition it was possessed of personal property amounting to $29,953.99, and that, deducting the assessed value of the real estate from the total of $629,953.99, while leaving an apparent balance liable to taxation of $29,953.99 as personal property, was subject to a further reduction of $230,000.00, its indebtedness, leaving nothing assessable as capital and surplus.

We ascertained, however, that in the statement of its total gross assets, as indicated above, the relator had included its real estate at its assessed value, but we learned from its admissions, first, that the amount actually paid for real estate was the sum of $1,036,728.66, of which $577,000.00 had been paid for the land, being a plot in Cedar street, between Broadway and Nassau, and $461,728.66 for the improvements upon that plot, and that the actual value at which the said real estate was carried on the books of the relator as an asset was at the cost price, the reason given, however, being that it was so carried for the purpose of balancing accounts and not otherwise.

From the said statement we further ascertained that the relator had no debts in excess of the sum of $230,000.00.

We, therefore, as we had been instructed by the courts was our duty in like case, determined the value of the whole property of the corporation to be $1,066,682.65, and from that sum we deducted the assessed value of the real estate, $600,000.00, its indebtedness amounting to $230,000.00 and fixed the taxable balance at $236,682.65.

Substantially the claim of the relator, urged before us and based upon no proof whatever except the affidavit of its manager, who was neither shown nor asserted to be conversant with the
26 values of real estate or qualified in anywise to testify as an expert, was that while the company had paid for the land the sum of $575,000, and had thereafter erected upon the plot a building at a cost of $461,728.66, that the building added nothing to the value of the land, and that in determining the value of the gross assets of the relator, that substantially we should eliminate the structure.

The building in question is situated in the business part of the city and is a structure with which we were entirely familiar, and we know that as a matter of fact the building was not as a whole devoted to the uses of the relator, but that the Chase national bank occupied a large portion of the building. Therefore, we rejected it, first, as an allegation made with no proof to support it; and, second, upon our own knowledge of the facts as wholly unwarranted the claim of the relator before us that the assessed value was the true value of its real estate, and decided that no injustice was done the relator by taking the cost as the true measure of value in determin-

ing the total of the real estate, both ground and building, of this corporation.

The relator in its statement to us showed no surplus earnings or any dividend declared or paid, and, therefore, we are advised by counsel, and so return, that the claim in the petition that the relator was entitled to a reduction of ten per cent. of the capital stock is altogether erroneous, and that though no such claim was made to us, we were correct in refusing to make such deduction from the taxable value of the property of the corporation.

While we are advised by counsel that the allegations in the petition which are conclusions of law need not be controverted by us in this return, nevertheless we deny, as is alleged in the said petition, that any provision of the Constitution of the United States has been violated, or that in our application of the law—namely, of chapter 456 of the Laws of 1857—to the facts made to appear to us on this assessment, is an illegal or unconstitutional construc-
27 tion, or that in any respect whatever any principle of law has been violated to the detriment of the petitioner.

With regard to the statements contained in said writ, and the petition upon which the same was granted, to the effect that said assessment is erroneous by reason of overvaluation, or is unequal in that it was made at a higher proportionate valuation than other real or personal property on the same rolls, or that the said assessment, upon any of the grounds specified in said petition, is illegal, erroneous or void, we certify and return, upon information and belief, that each and every of such statements is untrue.

In witness whereof, we have hereunto subscribed our names, this — day of ——, 189–.

E. P. BARKER,
JAMES L. WELLS,
Commissioners of Taxes and Assessments.

CITY AND COUNTY OF NEW YORK, *ss:*

Edward P. Barker, Theodore Sutro and James L. Wells, being severally duly sworn, say, and each for himself says, that the foregoing return is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

E. P. BARKER.
JAMES L. WELLS.

Sworn to before me this 23d day of November, 1897.

C. ROCKLAND TYNG,
Notary Public, New York County.

28 (SCHEDULE A.)

City of New York, department of taxes and assessments.

COMMISSIONERS' OFFICE,
STEWART BUILDING, 280 BROADWAY.

☞Please state the full name of the corporation.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York for and in behalf of the New York Clearing House Building Company, showing its condition for the purpose of assessment, on the second Monday of January, 1897.

Total gross assets, including real estate		$629,953 99
Of above—real estate	$600,000.00	
Personal property	$29,953.99	
Capital stock actually paid in, or secured to be paid in.		$900,000 00
Amount of surplus earnings		None.
Rate of dividend for last year, or last annual dividend		None.
Amount actually paid for real estate owned by you.		$1,036,728 66
Actual value at which such real estate is carried on your books as an asset		Nominally at cost for the purpose of balancing accounts and not otherwise.

Indebtedness in detail as follows:

Loan from the New York Clearing House Association	$230,000 00

29 Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

Assessed value of real estate, describing particularly by ward and ward map numbers:

Ward 1, ward map No. 1028 Cedar street, $600,000.

Amounts invested in the stocks of other corporations which are taxed upon their capital. None.

Amount invested in U. S. securities. None.

(If the stock of the company is worth less than par, state the actual value, and give the facts under oath which will justify such estimate of its value.)

The stock of the company on January 11, 1897, was worth less than par. Its actual value is above stated as $629,953.99, against which the company owes $230,000, leaving net, $399,953.99. The facts upon which this statement of its value is based are as follows: Its personal property amounted to $29,953.99. Its only other

property consisted of the parcel of real estate above described. The company paid for its land the amount of $575,000. Since purchasing this land the company has expended in erecting a building thereon the amount of $461,728.66, of which $230,000 were loaned to it by the New York Clearing House Association, which holds all the shares of stock of the company, and for whose use the said building was specially constructed. The said building was planned, arranged and fitted expressly for the purpose of the operations of the said Clearing House Association in effecting the daily exchanges between the banks which are members thereof and in settling the balances arising upon such exchanges. The operations of the clearing-house required a low, broad building, with large rooms well lighted and easily accessible. The character of the building is, therefore, widely different from the business buildings in the lower part of the city, and is not fitted for any other
30 use than that for which it was designed, namely, that of a bank clearing-house. The building, therefore, does not add to the value of the land as real estate. The amount for which the company's real estate would sell under ordinary circumstances does not exceed its assessed value of $600,000.

The principal office or the place of transacting the financial business of the said corporation is situated in the first ward of the city of New York, at No. 77 Cedar St.

CITY OF NEW YORK, *ss:*

I, Wm. Sherer, the manager of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

WM. SHERER, *Manager.*

Sworn to before me this 29th day of April, 1897.

C. E. BACON,

[L. S.] *Notary Public.*

Ctf. filed in New York.

☞ The commissioners are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

31 Wm. S. Opdyke. David Willcox. Wm. B. Bristow.

Opdyke, Willcox & Bristow, 20 Nassau St., New York.

APRIL 29, 1897.

To the commissioners of taxes and assessments of the city and county of New York:

The New York Clearing House Building Company in handing you the accompanying statement showing its condition for purposes of assessment on the second Monday of January, 1897, insists that

its capital stock is not subject to any assessment for taxation for the current year after making the deductions authorized by law.

The statement shows that while its nominal capital stock is $900,000, it owes $230,000, and its only assets are its real estate in Cedar street, New York, and personal property of the value of $29,953.99.

Its real estate has been assessed for taxation at $600,000, and the company insists that the value of this real estate for purposes of taxation does not, as a matter of fact, exceed this said assessed value of $600,000. The company paid for the land embraced in this property $575,000. It has expended a large amount in putting up a building on this land for a special purpose, but this building is not fitted for general purposes, and so far as the market value of the property for sale is concerned, the building has not added to the value of the land. Since the property is to be assessed for taxation at the value for which it would, under ordinary circumstances, sell, the value of this real estate does not exceed $600,000.

Therefore, after making the deductions of the assessed value of the real estate and the company's obligations, the company is not assessable for any amount for the current year.

32 Moreover, whatever the commissioners may consider the value of this real estate, irrespective of the amount for which it has been assessed by them as real estate, the company insists that it is not assessable in respect to its capital stock by reason of its ownership of this real estate in any amount in excess of its assessed value. The "capital stock" subjected to taxation in this State is merely the real and personal property owned by the corporation and its franchises. The real estate has been assessed as such. The company as owner of this property cannot be subjected to a greater amount of assessment and taxation in respect thereto, because it happens to be a corporation instead of an individual. An individual owning the building would pay taxes in respect to his ownership of such property only upon the assessed value thereof, and no different rule can be applied in the case of ownership by a corporation. Any such rule would be in violation of the 14th amendment of the Constitution of the United States, under which corporations and individuals are alike entitled to the equal protection of the laws.

Therefore, even if the commissioners should believe that the company's real estate has a margin of value, by reason of its costs or otherwise above its assessed valuation, it is insisted that, in valuing the company's capital stock for asssesment, no such margin of value can be added to the other property of the company. The company's real estate has been already assessed. No portion of the value of this land can be considered as a portion of the company's personal estate. This would be admitted in the case of an individual, and the laws of the State of New York provide that the manner of assessment and taxation of the property of corporations must be the same as that of individuals, and the

33 United States Constitution guarantees to corporations like other citizens the equal protection of the laws.

Since, therefore, the debts of the company exceed the value of its personal property and its real estate has already been assessed, the commissioners have no power to assess the corporation upon its capital stock in respect to any margin of value of its real estate; it is insisted that the company is not liable to any assessment upon its capital stock. The company, therefore, applies to have any assessed valuation upon the stock of the company stricken from the annual record of assessed valuation of real and personal estate for the present year.

Yours respectfully,

N. Y. CLEARING HOUSE BUILDING CO.
OPDYKE, WILLCOX & BRISTOW, *Att'ys.*

34

SCHEDULE B.

Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company
against
EDWARD P. BARKER, THEODORE SUTRO, and James L. Wells, the Commissioners of Taxes and Assessments of the City of New York.
} Taxes of 1897.

SCHEDULE B.

Page.	Line.	Name.	Principal office.	Ward.	Valuation.	Corrected amount.	Remarks
313	2173	New York Clearing House Building Co.....	77 Cedar...	1	[$900,000]*	$236,683	B. W.

[* Figures enclosed in brackets erased in copy.]

STATE OF NEW YORK, }
City of New York, } ss.:

I, Edward T. Taggard, one of the deputy tax commissioners of the city of New York, do depose and say, that the foregoing annual record of the assessed valuations of the personal estate of corporate companies and joint stock associations contains a detailed statement of the taxable personal property of such corporations and joint stock associations in this city, for the year one thousand eight hundred and ninety-seven (1897).

E. T. TAGGARD,
Deputy Tax Commissioner.

Sworn to before me, this the 9th day of January, 1897.

MORGAN J. O'BRIEN,
Justice of the Supreme Court.

35 *Order Dismissing Writ.*

At a special term, part III, of the supreme court, in and for the city and county of New York, held in the county court-house in said city on the 13th day of December, 1897.

Present: Hon. Miles Beach, justice.

(Title of Proceeding.)

The above-named relator having sued out a writ of *certiorari* to review the proceedings of the above-named respondents in assessing the personal property or capital stock of the relator for the year 1897 at the sum of $236,683, and the said writ having come duly on for argument:

Now, upon reading and filing the petition verified the 13th day of July, 1897, with the exhibits thereto attached, the order granting the writ of *certiorari* dated the 14th day of July, 1897, and the writ of *certiorari* therein allowed on the 14th day of July, 1897, and the return of the respondents thereto, with the schedules thereto attached, filed in the office of the clerk of the city and county of New York on the 23d day of November, 1897, and after hearing David Willcox, Esq., of counsel for the relator, in support of said writ, and James M. Ward, Esq., of counsel for the respondents, in opposition thereto:

Now, upon motion of Francis M. Scott, counsel to the corporation, it is—

Ordered, that the prayer of said petitioner be denied and the said writ of *certiorari* be, and the same hereby is, dismissed with costs to the respondents, to be taxed in accordance with chapter 269 of the Laws of 1880.

Enter.

M. B., *J. S. C.*

36 *Judgment.*

(Title of Proceeding.)

The above-named relator, having sued out a writ of *certiorari* to review the proceedings of the above-named defendants in assessing the personal property or capital stock of the relator for the year 1897, at the sum of $236,683, and the said writ having been duly argued, and an order having been duly entered herein in the office of the clerk of the city and county of New York on the 14th day of December, 1897, denying the prayer of the relator and dismissing the writ of *certiorari* herein with costs to the defendants, and the defendants having been duly taxed at the sum of $57.50:

Now, upon motion of Francis M. Scott, counsel to the corporation, it is—

Ordered and adjudged that the writ of *certiorari* herein be, and the same hereby is, dismissed; and it is—

Further ordered and adjudged that the above-named defendants Edward P. Barker, Theodore Sutro and James L. Wells, as commissioners of taxes and assessments of the city and county of New York,

recover of the above-named relator The New York Clearing House Building Company, the sum of $57.50 the amount of their costs as taxed, and that they have execution therefor.

Dated New York, December 21, 1897.

HENRY D. PURROY, *Clerk.*

37 *Notice of Appeal.*

(Title of Proceedings.)

SIRS: Please take notice that the relator, The New York Clearing House Building Company hereby appeals to the appellate division of this court for the first department from the order of Hon. Miles Beach, J., made herein, dated December 13, 1897, and entered and filed in the office of the clerk of the city and county of New York on the 14th day of December, 1897, dismissing a writ of *certiorari* to review the proceedings of the defendants Edward P. Barker, Theodore Sutro and James L. Wells, as commissioners of taxes and assessments of the city of New York, in assessing personal property or capital stock of the relator for the year 1897, and from each and every part of the said order, and also from the judgment entered thereupon and filed in the office of the clerk of the city and county of New York on the 21st day of December, 1897, and from each and every part of said judgment.

Dated New York, N. Y., December 24th, 1897.

Yours, &c.,

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator, 20 Nassau Street, New York, N. Y.

To the clerk of the city and county of New York: Francis M. Scott, Esq., counsel to the corporation, 1 Tryon row, New York, N. Y.

38 *Waiver of Certification.*

(Title of Proceeding.)

It is hereby stipulated that the foregoing printed papers contain true copies of the notice of appeal, the judgment-roll filed herein, and of all the papers used in the court below in the above-entitled proceeding, and certification in pursuance of section 1353 of the Code of Civil Procedure is hereby waived.

Dated New York, N. Y., January 7th, 1898.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator and Appellant,
20 Nassau Street, New York, N. Y.
JOHN WHALEN,
Counsel to Corporation, Attorney for Respondents,
2 Tryon Row, New York, N. Y.

39 *Affidavit as to Opinion.*

(Title of Proceeding.)

CITY AND COUNTY OF NEW YORK, *ss.:*

David Willcox, being duly sworn, says:

I. He is one of the attorneys for the relator and appellant in the above-entitled proceeding.

II. On the 14th day of December, 1897, an order was made by Hon. Miles Beach, J., and duly entered herein, dismissing the writ of *certiorari*, the said order being made without any accompanying opinion, and no opinion whatever has, before or since, been made by any judge.

DAVID WILLCOX.

Sworn to before me this 7th day of January, 1898.

F. W. LONGFELLOW,
Notary Public, (55), *New York County, N. Y.*

40 *Order of Affirmance.*

At a term of the appellate division of the supreme court in and for the first department, held at the court-house thereof, at No. 111 Fifth avenue, in the county of New York, on the 13th day of January, 1899.

Present—

Hon. Charles H. Van Brunt, P. J.
Hon. George C. Barrett,
Hon. William Rumsey,
Hon. Edward Patterson,
Hon. Morgan J. O'Brien, } JJ.

(Title of Proceeding.)

The above-named relator, having appealed to the appellate division of the supreme court in and for the first department from the order herein entered and filed in the office of the clerk of the county of New York on the 14th day of December, 1897, dismissing the writ of *certiorari* herein with costs, and from the judgment herein entered and filed in the office of the clerk of the county of New York on the 21st day of December, 1897, dismissing the writ of *certiorari*, with $57.50 costs to the defendants, and the said appeal having come duly on to be heard, now, after hearing David Willcox, Esq., of counsel for the relator, in support of said appeal, and James M. Ward, Esq., of counsel for the defendants, in opposition thereto, and due deliberation having been had, upon motion of John Whalen, corporation counsel, it is unanimously

Ordered that the said order and judgment so appealed from as aforesaid be, and the same hereby are, affirmed, with costs and disbursements to the defendants.

Ent. C. H. V. B.

41 *Notice of Appeal to Court of Appeals.*

(Title of Proceeding.)

SIRS: Please take notice that the relator, The New York Clearing House Building Company, hereby appeals to the court of appeals of the State of New York from the order of the appellate division of the supreme court for the first department, entered and filed in the office of the clerk of said court on the 19th day of January, 1899, affirming the order herein, entered and filed in the office of the clerk of the county of New York on the 14th day of December, 1897, dismissing the writ of *certiorari* herein, and the judgment entered upon said order and filed in the office of the clerk of the county of New York on the 21st day of December, 1897.

Dated, (Manhattan), New York, N. Y., January 24th, 1899.

Yours, &c.,

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator, 20 Nassau Street, Borough of Manhattan, New York, N. Y.

To John Whalen, Esq., corporation counsel, attorney for defendants, 2 Tryon row, borough of Manhattan, New York, N. Y.

William Sohmer, Esq., clerk of the county of New York, county court-house, borough of Manhattan, New York, N. Y.

42 *Stipulation Waiving Certification.*

(Title of Proceeding.)

It is hereby stipulated, by and between the attorneys for the respective parties hereto, that the foregoing printed papers contain true copies of the notice of appeal to the court of appeals, the order of the appellate division of the supreme court for the first department appealed from, and of all the papers upon which the said order of the said appellate division was founded, and certification thereof, pursuant to section 1315 of the N. Y. Code of Civil Procedure, is hereby waived.

Dated, borough of Manhattan, New York, N. Y., January 30th, 1899.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator and Appellant, 20 Nassau Street, Borough of Manhattan, New York, N. Y.

JOHN WHALEN,
Corporation Counsel, Attorney for Respondents, 2 Tryon Row, Borough of Manhattan, New York, N. Y.

43 *Affidavit as to Opinion.*

(Title of Proceeding.)

COUNTY OF NEW YORK, *ss:*

David Wilcox, being duly sworn, says:

I. He is a member of the firm of Opdyke, Willcox & Bristow, the attorneys for the relator and appellant in the above-entitled proceeding.

II. The order of the appellate division of the supreme court for the first department duly entered and filed in the office of the clerk of said court on the 19th day of January, 1899, affirming the order dismissing the writ of *certiorari* herein, and the judgment entered thereupon, was made by the said court without any accompanying opinion.

DAVID WILLCOX.

Sworn to before me this 30th day of January, 1899.

J. V. SMITH,
Notary Public, Kings County.

Cert. filed in New York county.

44 Court of Appeals of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Complainant and Appellant, *against* EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Defendants and Appellees. } Taxes of 1897.

In this cause application having been made to the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York, that being the highest court of record in this State in which said cause can be heard, for the allowance of a writ of error to remove said cause to the Supreme Court of the United States for review in accordance with the Constitution and laws of the United States and the rules and practice of the Supreme Court of the United States, and for the fixing and approving of the bond on the removal of said cause to the Supreme Court of the United States, it is hereby ordered that said writ of error be, and the same is hereby, allowed, and the same may be issued by any officer authorized to issue the same, and the penalty in the bond is hereby fixed at the sum of one thousand dollars, with the Lawyers' Surety Company of New York City as surety thereon.

April 7th, 1899.

ALTON B. PARKER,
Chief Justice of the Court of Appeals of the State of New York.

45 To the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York:

And now comes The People of the State of New York on the relation of The New York Clearing House Building Company, by Opdyke, Willcox & Bristow, its attorneys, and complains that in the record and proceedings and also in the rendition of a judgment — a plea in the suit between The People of the State of New York on the relation of The New York Clearing House Building Company, relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants, which is in the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had, the said court of appeals having rendered a decision affirming the said judgment theretofore rendered in the said supreme court on the 27th day of January, 1899, affirming the judgment of the special term of the said supreme court rendered on the 21st day of December, 1897, against the relator and in favor of the defendants for the sum of fifty-seven dollars and fifty cents ($57.50) costs, and dismissing the writ of certiorari sued out by the relator, wherein was drawn in question the validity of a statute of said State and of an authority exercised thereunder, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, all which appear in the records and proceedings in said suit, manifest error hath happened, to the great damage of the said The New York Clearing House Building Company.

46 Wherefore the said The New York Clearing House Building Company, by its attorneys aforesaid, prays for the allowance of a writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for the New York Clearing House Building Company.

47 [Endorsed:] Court of appeals of New York. The People of the State of New York on the relation of The New York Clearing House Building Company, plaintiff and appellant, against Edward P. Barker and others, commissioners of taxes, &c., defendants and appellees. (Taxes of 1897.) (Original.) Petition for writ of error and order allowing same. Opdyke, Willcox & Bristow, attorneys for plaintiff & appellant, No. 20 Nassau street, New York, N. Y.

48 UNITED STATES OF AMERICA, *ss*:

Seal of the U. S. Circuit Court, Northern District N. Y.

The President of the United States of America to the honorable the judges of the court of appeals of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the

said State in which a decision could be had in the said suit between The People of the State of New York *ex rel.* The New York Clearing House Building Company, relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants (taxes of 1897), wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the

49 construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The New York Clearing House Building Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

W. S. DOOLITTLE,
Clerk of the United States Circuit Court,
North. District of New York,
By C. W. HIGGISON, *Deputy.*

Allowed by—
ALTON B. PARKER,
Chief Justice of the Court of Appeals
of the State of New York.

50 UNITED STATES OF AMERICA, *ss:*

To Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the

clerk's office of the New York court of appeals, in a suit wherein The People of the State of New York *ex rel.* The New York Clearing House Building Company are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alton B. Parker, chief justice of the court of appeals of New York, this 29th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of New York.

51 STATE OF NEW YORK, }
County of New York, } *ss.:*

On this 3rd day of May, in the year of our Lord one thousand eight hundred and ninety-nine, personally appeared John Monaghan before me, the subscriber, a notary public in and for the county of Kings, certificate filed in New York county, and makes oath that he delivered true copies of the within citation to James L. Wells, commissioner of taxes, &c., at 145 Broadway, Manhattan, N. Y. city; Theodore Sutro, commissioner of taxes, &c., at 280 Broadway, N. Y. city (Manhattan), and Edward P. Barker, commissioner of taxes, &c., at Hotel Bayard, 1703 Broadway, Manhattan, N. Y. city.

That said copies were all delivered to the aforesaid on the 2nd day of May, 1899.

JOHN MONAGHAN.

Sworn to and subscribed the 3rd day of May, A. D. 1899.

[Seal of J. V. Smith, Notary Public, Kings County.]

J. V. SMITH,
Notary Public, Kings County.

Cert. filed in New York county.

52 [Endorsed:] Court of appeals of New York. The People of the State of New York *ex rel.* The New York Clearing House Building Company, plaintiff in error, against Edward P. Barker and others, commissioners of taxes, &c., defendants in error. (Taxes of 1897.) Original. Citation and proof of service. Opdyke, Willcox & Bristow, attorneys for pl'ffs in error, No. 20 Nassau street, New York, N. Y. Service this day of a copy of the within citation is hereby admitted. Dated N. Y., May —, 1899. A copy of the within paper has been this day received at the office of the corporation counsel. May 2, 1899. John Whalen, corporation counsel.

53 In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Relator,
against
EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Defendants.
} Taxes of 1897.

The relator assigns the following errors in the final decision of this court, filed herein upon March 13, 1899:

I. The court erred in holding and deciding that the relator was not entitled to the remedy and relief prayed for in its petition and in affirming the order of the supreme court denying the prayer of said petition and dismissing the writ of certiorari theretofore issued pursuant to said petition.

II. The court erred in not ordering and adjudging that the order of the supreme court denying the prayer of the petition and dismissing the writ of certiorari be reversed, and that the prayer of said petition be granted and the assessment therein specified be stricken from the roll.

III. The court erred in denying to the relator the rights claimed by it in its said petition under the fourteenth amendment to the Constitution of the United States and in denying to the relator any relief on that ground.

IV. The court erred in not holding and adjudging that the assessment set forth in the relator's petition was contrary to the
54 provision of the fourteenth amendment to the Constitution of the United States securing to the relator the equal protection of the laws, and that the relator was entitled, upon that ground, to judgment striking said assessment from the roll.

V. The court erred in deciding in favor of the validity of the statutes of the State of New York and the authority exercised under said statutes pursuant to which the assessment specified in the relator's petition was imposed, notwithstanding that their validity was drawn in question on the ground of their being repugnant to the Constitution of the United States.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator.

55 [Endorsed:] N. Y. court of appeals. The People of the State of New York on the relation of The New York Clearing House Building Company, relator, against Edward P. Barker and others, commissioners of taxes, &c., defendants. (Taxes of 1897.) (Original.) Assignment of errors. Opdyke, Willcox & Bristow, attorneys for relator, No. 20 Nassau street, New York, N. Y.

56 Know all men by these presents that we, The New York Clearing House Building Company, as principal, and The Lawyers' Surety Company of New York City, as surety, are held and firmly bound unto Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, in the full and just sum of one thousand dollars, to be paid to the said Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, their certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors or assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a session of the court of appeals of New York, in a suit depending in said court between The People of the State of New York *ex rel.* The New York Clearing House Building Company, relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants, a decision was rendered against the said relator and affirming the judgment of the supreme court of the State of New York, the writ of certiorari issued in said suit, and the said relator, The New York Clearing House Building Company, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decision in the aforesaid suit, and a citation directed to the said Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and

57 assessments of the city and county of New York, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said The New York Clearing House Building Company shall prosecute its said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE NEW YORK CLEARING HOUSE BUILDING CO.,
By G. G. WILLIAMS. [SEAL.]
THE LAWYERS' SURETY COMPANY OF NEW YORK,
[SEAL.] By THOMAS HUNT, *2d Vice-President.*
Attest: JOEL RATHBONE, *Secretary.*

Sealed and delivered in presence of—
H. G. HINTON,
As to L. S. Co.

Approved by—
ALTON B. PARKER,
Chief Justice of the Court of Appeals of New York.

58 Form No. 209.

STATE OF NEW YORK, } ss:
County of New York, }

On the 30th day of March, in the year 1899, before me personally came Thomas Hunt, to me known, who, being by me duly sworn, did depose and say, that he resided in the city of New York; that he is the 2d vice-president of the Lawyers' Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893.

[SEAL.] H. G. HINTON,
Notary Public, Kings County, N. Y.

Certificate filed in N. Y. Co.

At a stated meeting of the board of directors of the Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 and 36 Liberty street, in said city, on the 21st day of April, 1897, on motion, it was unanimously

"Resolved, That the president, the vice-president, the acting president or the second vice-president be, and either of them is, hereby authorized and empowered to sign, execute and deliver any and all bonds or undertakings for or on behalf of the company, and to attach thereto the seal of the corporation, the same to be attested by the secretary or the acting secretary."

COUNTY OF NEW YORK, ss:

I, Joel Rathbone, secretary of the Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 30th day of March, 1899.

[SEAL.] JOEL RATHBONE, *Secretary.*

59 [Endorsed:] N. Y. supreme court. The People of the State of New York *ex rel.* The New York Clearing House Building Company, plaintiff in error, against Edward P. Barker and others, commissioners of taxes and assessments, &c., defendants in error. (Taxes of 1897.) Bond.

60 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

I, W. H. Shankland, clerk of the court of appeals of the said State of New York, do hereby certify that the annexed papers constitute the original return and the whole thereof upon which the said court of appeals acted in rendering judgment herein, together with the remittitur of said court and the petition, order, writ of error, citation, copy of bond, and assignment of error to the United States Supreme Court herein.

Seal State of New York Court of Appeals.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this twenty-ninth day of April, A. D. 1899.

W. H. SHANKLAND,
Clerk Court of Appeals, State of New York.

Endorsed on cover: File No., 17,399. New York court of appeals. Term No., 289. The People of the State of New York *ex rel.* The New York Clearing House Building Company, plaintiff in error, *vs.* Edward P. Barker, Theodore Sutro, & James L. Wells, commissioners of taxes & assessments of the city and county of New York. Filed May 6th, 1899.

Office Supreme Court
FILED
AUG 16 1900
JAMES H. McKENNEY,
Clerk

No. 52.

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

Filed Aug. 16, 1900.

OCTOBER TERM, 1900.

No. 52.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of THE NEW YORK CLEARING HOUSE BUILDING COMPANY,

Plaintiff in Error,

against

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

Brief,

for Plaintiff in Error.

(TAXES OF 1897.)

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Counsel for Plaintiff in Error.

C. G. Burgoyne, Walker and Centre Streets, New York.

Supreme Court of the United States.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the NEW YORK CLEARING HOUSE BUILDING COMPANY, Plaintiff in error,

AGAINST

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York,

No. 52
October Term, 1900.
(Taxes of 1897)

BRIEF,
for plaintiff in error.

Upon July 14, 1897, a writ of *certiorari* was duly sued out in the New York Supreme Court pursuant to the provisions of the Tax Law of 1896, (Chapter 908, sections 250, 251), and of the Consolidation Act (Laws of 1882, Chap. 410, Sec. 821) by the New York Clearing House Building Company to review the action of the Commissioners of Taxes and Assessments of the City and County of New York in assessing the relator upon its personal property (p. 22) for the year 1897 for the sum of $236,683. At the Special Term the writ was dismissed without opinion (p. 23). The relator appealed (p. 24) to the Appellate Division of the Supreme Court which affirmed the judgment of the Special Term without opinion (p. 25; 36 App. Div., 636). The relator then appealed to the Court of Appeals (p. 26) which affirmed the judgment without opinion (p. 2; 158 N. Y., 709). The relator thereupon sued out this writ of error (pp. 28–30).

STATEMENT.

Pursuant to law the relator duly filed with the Commissioners a statement showing its condition for the purpose of assessment for the year 1897 (pp. 8, 9, 19, 20). This showed that the relator had personal property amounting to $29,953.99 and that its indebtedness amounted to $230,000. The relator was entitled to have these debts deducted from any assessment against it for personal property (People *ex rel.* Second Avenue R. R. Co. vs. Barker, 141 N. Y., 196; People *ex rel.* Cornell Steamboat Co. vs. Dederick, 161 N. Y., 195). The relator's debts accordingly exceeded the total amount of its personal property by the sum of $200,046.01.

The difference between the relator and the Commissioners arose from the ownership by the relator of a single parcel of real estate. Under the statutory provision requiring that they assess the same at its full value (Tax Law, Sec. 21, subdiv. 3, *infra*, p. 4) or, in the terms of the Consolidation Act (Laws of 1882, Chap. 410, Sec. 814, *infra*, p. 4), the sum for which such property under ordinary circumstances would sell, the Commissioners had already assessed this parcel of real estate for the year 1897 at $600,000 (pp. 9, 19). In the aforesaid statement for the purpose of assessment the relator stated this sum of $600,000 as the value of the real estate in question (pp. 8, 19).

The Commissioners disregarded this statement and also the fact that they had just found the full value (Tax Law, Sec. 21, subdiv. 3) —the sum for which said property under ordinary circumstances would sell (Consolidation Act, § 814)—of this parcel of real estate to be $600,000, and, without any reason therefor which appears in the return, found that its actual value was its cost to the relator, namely $1,036,728.66 (p. 17). The Commissioners were thus in the position of finding that the full value (Tax Law, Sec. 21, subdiv. 3) of this real estate was $600,000 and that its actual value was $1,036,728.66. The difference between these sums was $436,728.66. From this the Commissioners deducted the relator's indebtedness over and above the amount of its personal property as above stated, namely, $200,046.01. The remainder was $236,682.65. The Commissioners assessed the relator in that amount—or for round figures, $236,683—upon its taxable personal property in this City (p. 22).

This case arose under the present Tax Law (Laws of 1896, Chapter 908). The action of the Commissioners was based upon the claim that real property owned by corpora-

tions is assessable differently from that owned by individuals. The section upon which this claim rests (Tax Law, Sec. 12, *infra*, p. 4) provides that, "the capital stock of every company liable to taxation, "except such part of it as shall have been excepted in the assess- "ment roll or shall be exempt by law, together with its surplus "profits or reserve funds exceeding ten per centum of its capital "after deducting the assessed value of its real estate, and all "shares of stock in other corporations actually owned by such "company which are taxable upon their capital stock under the "laws of this state, shall be assessed at its actual value." It is settled that this is not a franchise tax but merely a tax upon the property of the corporation exclusive of its franchises. (People *ex rel.* Union Trust Co. vs. Colman, 126 N. Y. 433. People *ex rel.* Manhattan Co. vs. Barber 146 N. Y. 304, 312; S. C. 152 N. Y., 417, 453.)

An individual who owns real estate is, of course, assessable upon the same merely as real estate; but the claim of the Commissioners is that a corporation owning the same real estate is assessable not merely upon the same as real estate, but also upon the margin of difference between the assessed and the actual value of its real estate as personal property. The relator claimed before the Commissioners (pp. 11, 21) and in its petition for the writ of *certiorari* (p. 6) that this construction of the statute was contrary to the Constitution because it denied to the relator the equal protection of the laws, and it has constantly insisted upon that claim.

The record contains a full assignment of errors setting forth this claim (p. 31). The terms thereof are the same as those of the assignment of error in No. 51 argued herewith. By reason of the fact that a revision of the tax laws of the state took place in the meantime resulting in the tax law (Laws of 1896, chap. 908, *infra*, p. 4), the statutes controlling the two cases vary slightly. The Federal question in the two cases is, however, the same.

The present case is, therefore, submitted on the argument contained in the brief in No. 51 which it seems unnecessary to repeat. For the reasons therein stated, the judgment should be reversed.

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Counsel for plaintiff in error.

STATUTES OF THE STATE OF NEW YORK.

Tax Law, Laws of 1896, Chapter 908, Sec. 9.

When real property is owned by a resident of a tax district in which it is situated, it shall be assessedto him.

Id. Sec. 21.

They (the assessing officers) shall prepare an assessment roll containing five separate columns and shall according to the best information in their power set down * * *

2. In the second column the quantity of real property taxable to each person with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column, the full value of such real property.

Id. Sec. 12.

The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

Consolidation Act, Chapter 410, Laws of 1882, Sec. 814.

It shall be the duty of the deputy tax commissioners, under the direction of the commissioners of taxes and assessments, to assess all the taxable property in the several districts that may be assigned to them for that purpose by said commissioners, and they shall furnish to them, under oath, a detailed statement of all such property showing that said deputies have personally examined each and every house, building, lot, pier, or other assessable property, giving the street and ward map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known ; also, in their judgment, the sum for which such property, under ordinary circumstances, would sell, with such other information, in detail, relative to personal property or otherwise, as the said commissioners may, from time to time, require. Such deputies shall commence to assess real and personal estate on the first Monday of September in each and every year.

No. 52.

FILED
OCT 12 1900
JAMES H. McKENNEY,
Clerk

Brf. of Connoly for D. Co.

Supreme Court of the United States,

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

Filed Oct. 12, 1900.

OCTOBER TERM, 1900—No. 52.

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF THE NEW YORK CLEARING HOUSE BUILDING COMPANY.

Plaintiff-in-Error,

against

EDWARD P. BARKER, THEODORE SUTRO AND JAMES L. WELLS, COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

TAXES OF 1897.

BRIEF FOR DEFENDANTS-IN-ERROR.

THEODORE CONNOLY,
JAMES M. WARD,
Counsel for Defendants-in-Error.

JOHN WHALEN,
Corporation Counsel,
Attorney for Defendants-in-Error.

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Supreme Court of the United States.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the NEW YORK CLEARING HOUSE BUILDING COMPANY,
Plaintiff in Error,

against

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York,
Defendants.

No. 52.
October Term, 1900.
Taxes of 1897.

Brief for Defendants in Error.

A writ of certiorari was duly sued out in the Supreme Court of New York pursuant to the provisions of the Tax Law, chapter 908 of the Laws of 1896, sections 250–251, and of the Consolidation Act, Laws of 1882, chapter 410, section 821, by the plaintiff in error herein to review the action of the Commissioners of Taxes and Assessments of the City and County of New York, in assessing the plaintiff in error upon its personal

property (p. 22) for the year 1897 in the sum of $236,683.

At a Special Term of the Supreme Court the writ was dismissed without opinion (p. 23). The relator having appealed to the Appellate Division of the Supreme Court, that Court affirmed the judgment of the Special Term without opinion (36 App. Div., 636, p. 25).

The relator appealed to the Court of Appeals of the State of New York from the order of affirmance of the Appellate Division of the Supreme Court, and that Court affirmed the judgment without opinion (158 N. Y., 709, p. 2).

The relator thereupon sued out this writ of error (pp. 28–30).

Statement.

A statement was filed with the Commissioners of Taxes and Assessments of the City and County of New York by relator showing its condition for purposes of assessment for the year 1897 (pp. 8–9, 19–20).

This statement alleged that the relator had personal property amounting to $29,953.99, and that its indebtedness amounted to $230,000.

The controversy between the relator and the Commissioners of Taxes and Assessments arose from the ownership by the relator of a parcel of real estate in the City of New York.

Under the Consolidation Act, Laws of 1882, chapter 410, section 814, which required that real estate be assessed at " the sum for which such property under

ordinary circumstances would sell," this parcel of real estate had been assessed by the Deputy Tax Commissioner assigned for that duty for the year in question at $600,000 (p. 919).

In the statement filed with the Commissioners by relator, already mentioned, the relator had stated the value of the real estate as being $600,000.

It appears by the return of the Commissioners (pp. 14-18) that the Deputy Tax Commissioner assessed the personal property, capital and surplus of the relator for the year 1897, the sum of $900,000.

And the return sets forth fully the method by which the result was reached.

It, among other things, states that it was alleged by the affidavit of the manager of the company, who is in no way asserted to be conversant with values of real estate, that the company had paid for the land the sum of $575,000, and had erected upon the plot a building at a cost of $461,728.66. That the building added nothing to the value of the land and the claim of the relator was that in determining the value of the gross assets of the relator that he substantially eliminated the structure from that consideration.

The Commissioners returned that the building in question is in the business part of the city, that they were entirely familiar with it and that they knew, as a matter of fact, that the building was not wholly devoted to the purposes of the relator, but that the Chase National Bank occupied a large portion of the building.

Therefore, the Commissioners rejected the statements submitted by the relator as being unsupported by proof and contrary to their knowledge.

And the Commissioners denied the allegations that the application of the law to the matter in question by the Commissioners rendered such law unconstitutional.

And the Commissioners further denied the statements in the writ and petition that the assessment was erroneous by reason of over-valuation or inequality, as is fully set forth in the return (pp. 17-18).

The case arose under the present Tax Law, Laws of 1896, chapter 908, which provides in section 12:

> "The capital stock of every company liable to taxation except such part of it as shall have been accepted in the assessment roll, or shall be exempt by law, together with its surplus profits or reserve funds, exceeding ten percentum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital under the laws of this state, shall be assessed at its actual value," (Laws of 1896, chapter 908, section 12).

It is claimed by the Commissioners that they in their action followed this statute, and that their action was in no wise illegal.

Of course they do not concede that the theory upon which they proceeded is the theory stated in the brief of plaintiff in error herein, or that their theory was other than that stated in their return.

The questions arising in this matter are substantially the same as those in the appeal of a similar title, No. 51 on the present calendar, and which is argued herewith, the only difference being caused by the amendment to the statute after the assessment which was made in a proceeding No. 51.

The questions in the two cases are the same, however, and the present case is, therefore, respectfully submitted on the argument contained in the brief for defendants in error in No. 51, argued herewith.

For the reasons therein stated the judgment should be affirmed.

THEODORE CONNOLY,
JAMES M. WARD,
Counsel for Defendants in Error.

Appendix.

STATUTES OF THE STATE OF NEW YORK.

Tax Law, Laws of 1896, chapter 908, section 9:

When real property is owned by a resident of a tax district in which it is situated, it shall be assessed to him.

Id., section 21:

They (the assessing officers) shall prepare an assessment-roll containing five separate columns and shall, according to the best information in their power, set down * * *

2. In the second column the quantity of real property taxable to each person, with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column, the full value of such real property.

Id., section 12:

The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

Consolidation Act, chapter 410, Laws of 1882, section 814:

It shall be the duty of the deputy tax commissioners, under the direction of the commissioners of taxes and

assessments, to assess all the taxable property in the several districts that may be assigned to them for that purpose by said commissioners, and they shall furnish to them, under oath, a detailed statement of all such property, showing that said deputies have personally examined each and every house, building, lot, pier, or other assessable property, giving the street and ward map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known; also, in their judgment, the sum for which such property, under ordinary circumstances, would sell, with such other information, in detail, relative to personal property or otherwise, as the said commissioners may, from time to time, require. Such deputies shall commence to assess real and personal estate on the first Monday of September in each and every year.

Supreme Court of the United States.

No. 51.—October Term, 1900.

The People of the State of New York ex rel. The New York Clearing House Building Company, Plaintiff in Error,
vs.
Edward P. Barker, Theodore Sutro and James L. Wells, Commissioners of Taxes and Assessments of the City and County of New York.

In error to the Court of Appeals of the State of New York.

[December 10, 1900.]

Mr. Justice Peckham delivered the opinion of the Court.

The plaintiff in error comes here for the purpose of obtaining a review of the judgment of the New York Court of Appeals, which affirmed the judgments of the courts below dismissing a writ of certiorari.

The relator is a corporation created under the laws of the State of New York and a resident of and doing business in the city of New York, and it procured the writ, as provided for in the statute, to review an assessment of $165,999 made upon its capital in the regular course of proceedings to levy and collect the annual tax budget of the city for the year 1896. Plaintiff sought to review the assessment on the ground, among others, that it was illegal, and that to levy it, under the facts stated, would be to deny to the company the equal protection of the laws.

The facts upon which the question arises are these: The capital of the company was $900,000. The tax commissioners of the city of New York, in the course of their proceeding to tax the actual value of that capital, ascertained the actual value of what they termed the total "gross assets" of the company, which they found to have been..... $1,095,049

This value was arrived at from a statement of its property made by the company to the commissioners. By the term "gross assets," used by the commissioners, is meant the actual value of the capital and surplus of the company, but not its franchise. (*People ex rel. Union Trust Company* v. *Coleman*, 126 N. Y. 433.)

From this total they deducted—

(*a*) The debts of the company.....	$329,050	
(*b*) The assessed value of the real estate of the company, otherwise taxed.....	600,000	
		929,050
Leaving a balance of.....		$165,999

which was the amount upon which the company was assessed upon its capital aside from the assessment of $600,000 separately made upon its real estate.

The company claims that these "gross assets" should have been stated at $730,049, and the same deduction should be made as in the above statement, which would result in no assessment on the capital.

This difference of gross assets arises in this way: As made up by the commissioners they consist of the actual value of the building and lot owned by the company in New York city, in which it does business, taking it at its cost as admitted by the company in its statement made to the commissioners and which the commissioners found to be its actual value, viz..... $965,000
And to that is added other property..... 130,050

Making a total of..... $1,095,049,

while the item as claimed by the company is made up of the value of the same building and lot as it was assessed by one of the deputy tax commissioners for the purpose of separate taxation under the law, such assessed value being..... $600,000
Added to that was the same item of..... 130,050

for other property as stated by the commissioners, the gross assets of the company by this valuation amounting to..... $730,050

and the difference between the two items is seen to be $365,000. The plaintiff in error insists that in arriving at the actual value of the capital for taxation under the statute of 1857 (the third section of which is set out below) the real estate which goes to make up a part of such value should be put in at its value as assessed for taxation in a separate manner, while the commissioners claim that as the law provides that the assessment upon the capital shall be at its actual value, it is necessary to arrive at the actual value of the real estate before a particular assessment can be reached in regard to the capital, which includes it, and that in arriving at the actual value of the real estate they are not estopped from determining what that actual value is by the fact that for the purpose of a separate assessment the real estate had been mistakenly and improperly assessed at another and a lower figure.

These conflictiug claims arise out of the statute which provides for the taxation of corporations, their capital stock and surplus, and the general statute which provides for the taxation of real estate belonging either to individuals or corporations. That portion of the statute relating to the taxation of the capital of corporations which provides the method to be pursued reads as follows:

"The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, or as shall have been exempted by law, together with its surplus profits or reserved

funds, exceeding ten per cent. of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations, actually owned by such company, which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value and taxed in the same manner as the other personal and real estate of the county." (Laws of 1857, Chap. 456, Sec. 3.)

As the New York Court of Appeals, in *The People ex rel. &c.* v. *Commissioners of Taxes &c.*, (95 N. Y. 554,) has said, there is a most extraordinary confusion of ideas in the above section. Its meaning has, however, in some respects been made tolerably clear by the above cited case, together with those of *The People ex rel. Union Trust Company* v. *Coleman*, (126 N. Y. 435,) and *People ex rel. Equitable Gas Light Company* v. *Barker*, (144 N. Y. 94.)

In the first case it was stated that the general purpose of the statutes relating to assessments and taxation is to secure an assessment of all property, real and personal, at its actual value, and they are to be construed and enforced with this purpose in view. A construction of the statute in relation to other questions not material here was given in that case. In the case reported in 126 N. Y., it was held that the phrase "capital stock" contained in the section above quoted meant not the share stock owned by the individual members but the capital owned by the corporation, and that this capital was to be taxed, together with the surplus, after making the reductions provided for in the section, and that the law did not include, for purposes of assessment and taxation, the franchises of the company.

In the *Equitable Gas Light Company Case*, (144 N. Y. 94,) it was held that in arriving at the actual value of the capital for purposes of assessment, the assessors were not concluded by the assessed value of the real estate made for purposes of separate taxation if that assessment were a mistaken one, but might legally disregard such assessed valuation and estimate the real estate at its actual value, although it exceeded its assessed value.

Looking at the manner of assessing the real property of both individuals and corporations we find the general statute is as follows:

1 Revised Statutes, 393, sec. 17; 9th ed. p. 1685:

"All real and personal estate liable to taxation shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor."

And also 1 Revised Statutes, 389, sec. 6:

"The real estate of all incorporated companies shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals. . . ."

The special statute applying to New York city is substantially the same so far as assessment at full or actual value is concerned. (Consolidation Act, chap. 410, Laws of 1882, sec. 814.)

Under these statutes the tax upon real estate must be imposed in all cases, both of individuals and of corporations, upon its full and true value as found by the assessors. In the case of the individual, however, no resort can be had to any other proceeding by which that tax can be increased by any subsequent assessment upon the difference between the assessed and the actual value of the real estate, if any there should be. In the case of corporations, on the contrary, under the construction given the statute of 1857 by the Court of Appeals, in the last above-cited case, if the real estate should be mistakenly assessed under the general statute at an undervaluation for purposes of separate taxation, the difference between the assessed and the actual value of the real estate may be reached in making an assessment upon the actual value of the capital under the act above mentioned. By such a result it is claimed the company is denied the equal protection of the laws. It must be remembered there is no claim made that in any event the corporation is taxed upon any property not legally taxable or that it is taxed beyond the actual value of its property as provided by law. The only claim is that in this opportunity to correct a mistaken assessment upon its real estate in the case of a corporation when assessed upon its capital, which does not exist in the case of an individual, the corporation is denied the equal protection of the laws. This is the sole Federal question in the case.

It is seen that the laws of the State provide for no undervaluation of real estate owned by either individuals or corporations. Those laws provide in terms for the assessment of all real estate at its actual value, while the whole force of the contention of the plaintiff in error is based upon the fact of undervaluation, although it is in the very teeth of the statute, and is a plain violation of its provisions. If there were no undervaluation of real estate, or, in other words, if the laws of the State were complied with, the question sought to be raised by the plaintiff could not arise. The failure of the assessors in this one instance to assess the real estate of the company for separate taxation at its actual value, and its assessment at that value in assessing for taxation the actual value of the capital of the company, could obviously work no denial of the equal protection of the laws to the company, if individuals were in fact assessed for their ownership of real estate at its full and true value as required by law. If the law were faithfully carried out, no harm could in any event come to the plaintiff in error by this subsequent assessment of its real estate at its full value, for it would only pay the same as individuals, they being assessed upon their real estate at its full value. To raise the question which the plaintiff in error seeks it was therefore obviously necessary to allege and prove as a fact that there was habitual violation of law by undervaluation; that, in the language of Mr. Justice Miller, in *Supervisors* v. *Stanley*, (105 U. S. 305, 318,) the assessors "habitually and inten-

tionally, or by some rule prescribed by themselves or by some one whom they were bound to obey," undervalued real estate for assessment in New York city; or, as stated in *Cummings* v. *National Bank*, (101 U. S. 153, 155,) that a rule or system of valuation had been adopted by those whose duty it was to make the assessment, which was designed to operate unequally and to violate a fundamental principle of the Constitution, and that such rule had been applied not solely to one individual, but to a large class of individuals or corporations. It was said in that case that this was precisely the case made by the bill, and if supported by the testimony, the court thought relief should be given. There was both allegation and proof.

Both these cases related to the taxation of national bank shares, and the question was whether the tax levied violated the provisions of the national banking act on that subject.

In this record there is no averment and no proof of any violation of law by the assessors of New York. There is no allegation in the petition for the writ of certiorari that there has been any undervaluation of real estate, either with regard to individuals or corporations, but on the contrary it is therein asserted that the assessed valuation of the real estate of the company was its actual value, and that it had been overvalued in the valuation of the capital of the company. The mere fact that the law gives the assessors in the case of corporations two chances to arrive at a correct valuation of their real estate, when they have but one in the case of individuals, cannot be held to be a denial to the corporations of the equal protection of the laws, so long as the real estate of the individual is, in fact, generally assessed at its full value. But we are nevertheless asked by the argument at bar, in the absence of allegations or proof of habitual, or indeed of any undervaluation, to assume or take judicial notice of its existence, notwithstanding such undervaluation would constitute a clear violation of the law of the State. And this we are asked to do in order to reverse a judgment of a State court. Such a presumption of the violation of law and of their duty by the assessors, the Court of Appeals of New York expressly refused to adopt. (*People ex rel. Manhattan Railway Company* v. *Barker*, 146 N. Y. 304.) In delivering the opinion of the court, Judge Haight said, at page 312:

"The value of property is determined by what it can be bought and sold for, and there can be no doubt but that these various expressions used in the statutes all are intended to mean the *actual value* of the property. The commisssoners are sworn officers, and as such, in the absence of evidence to the contrary, are presumed to have done their duty. They have assessed the real estate at $87,323,200, and yet, under the method presented by their counsel for ascertaining the value of the relator's personal property, they now estimate the actual value of the real estate to be $45,591,352. We are aware that it is generally understood that in many localities

throughout the State assessors, in violation of their duties, assess the real estate in their localities at a sum less than its actual value, but in the absence of evidence that this has been done by the commissioners of taxes and assessments in the city of New York, we cannot assume that they have so transgressed, for the purpose of approving of their work in this case."

Should this court, with reference to the action of the public and sworn officials of New York city, assume without evidence that they have violated the laws of their State, when the highest court of the State itself refuses, in the absence of evidence, to assume any such violation? We think not.

Nor did the Court of Appeals act upon any judicial notice of the fact of undervaluation in the case of *The Equitable Gas Light Company*, (144 N. Y.,) already cited. While the assessed value was stated, the commissioners in their return to the writ of certiorari distinctly showed that the actual was more than the assessed value, and the only question in the case was whether in arriving at the actual value of the capital they were bound by the assessed and could not be permitted to show the true value of the real estate. The court held they were not so bound.

What the court remarked about the practice of undervaluation was not the basis of its judicial action, for the facts were distinctly proved. The subsequent case in 146 N. Y. (*supra*) is a direct authority for the refusal to make any presumption of a violation of official duty.

This court did not presume a violation of duty in *Cummings* v. *National Bank*, (*supra.*) On the contrary, the bill alleged the facts, and the testimony supported the allegations. In extenuation of the practice alleged and proved, the court remarked in passing (page 162) that it was not limited to the State of Ohio, and that it was matter of common observation that in the valuation of real estate the rule was habitually disregarded. Although the justice who wrote the opinion did speak of the fact as matter of common observation, neither he nor the court took judicial notice thereof, but only those facts which had been pleaded and testimony to sustain which had been duly given formed the basis of judicial action. We will not and ought not to presume a violation in the absence of allegations and proofs to that effect.

Whether, if the case were proved, as assumed by counsel, it would in fact amount to any such discrimination against corporations as to work a denial to the plaintiff of the equal protection of the laws, is a question not raised by this record, and, therefore, not necessary to be decided.

We think the plaintiff in error has failed to show any error in the record, and the judgment of the Court of Appeals of New York is, therefore,

Affirmed.

No. 52.

The People of the State of New York ex rel. The New York Clearing House Building Company, Plaintiff in Error, *vs.* Edward P. Barker, Theodore Sutro and James L. Wells, Commissioners of Taxes and Assessments of the City and County of New York.	In error to the Court of Appeals of the State of New York.

Mr. Justice PECKHAM delivered the opinion of the Court.

This case involves the taxes of 1897, and the same question in substance arises herein that has just been decided in the preceding case, and the judgment is, therefore,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.